Supreme Court, U.S.
FILED

10-663 NOV 15 2010

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

ALEKSANDR MALYUTIN, PETITIONER

v.

CONDOLEEZZA RICE, FORMER SECRETARY OF THE UNITED STATES DEPARTMENT OF STATE, IN HER INDIVIDUAL CAPACITY ONLY, AND WILLIAM BURNS, FORMER AMBASSADOR OF THE UNITED STATES TO RUSSIA, IN HIS INDIVIDUAL CAPACITY ONLY, AND KURT AMEND, FORMER CONSUL GENERAL OF THE UNITED STATES AT THE UNITED STATES EMBASSY IN MOSCOW, RUSSIA, IN HIS INDIVIDUAL CAPACITY ONLY, AND DANIEL RUSSELL, FORMER DEPUTY CHIEF OF MISSION AT, AND/OR CHARGE D'AFFAIRES AD INTERIM OF, THE UNITED STATES EMBASSY IN MOSCOW, RUSSIA, IN HIS INDIVIDUAL CAPACITY ONLY, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ALEKSANDR MALYUTIN
Self-Represented

Davydkovskaya St., 12/2-49
Moscow, Russia 121352
+1 (718) 715-1390

QUESTIONS PRESENTED

1. Whether the detailed and precise complaint, which pleads essential factual allegations and required legal elements of individual-capacity claims against cabinet-level officers and other high-ranking officials under *Bivens*, and under the second clause of 42 U.S.C. Sec. 1985(2) - as provided for by 42 U.S.C. Sec. 1985(3), and under 42 U.S.C. Sec. 1986, may be dismissed as to those officials on the ground that unknown named non-party much-lower-level subordinate officials made a discretionary and non-reviewable decision in which such cabinet-level officers and other high-ranking officials took no part.

PARTIES TO THE PROCEEDINGS

The parties identified in the caption are the only parties to the proceedings. The following two unknown named individuals, although initially listed among defendants in the district court, have never been identified or served with process or made parties in the district court or in the court of appeals, and are not parties in this Court:

Unknown named white female consular officer at the U.S. Embassy in Moscow, Russia, in her individual capacity only; Unknown named white male consular officer at the U.S. Embassy in Moscow, Russia, in his individual capacity only.

TABLE OF CONTENTS

	Page
Opinions below	2
Jurisdiction	2
Laws Involved	2
Statement of the case	4
Reasons for granting the petition	11
Conclusion	13
Appendix A	1a
Appendix B	3a
Appendix C	4a
Appendix D	12a
Appendix E	13a
Appendix F	110a
Appendix G	193a

TABLE OF AUTHORITIES

Cases:

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)	6, 7, 8
Kush v. Rutledge, 460 U.S. 719 (1983)	6
Ryland v. Shapiro, 708 F.2d 967, 973 n. 7 (5th Cir. 1983)	6
Ashcroft v. Iqbal, No. 07-1015, 556 U.S. ___, 2009 WL 1361536 (May 18, 2009)	7

Statutes:

42 U.S.C. Sec. 1985(2)	2
42 U.S.C. Sec. 1985(3)	3
42 U.S.C. Sec. 1986	3

In the Supreme Court of the United States

NO.

ALEKSANDR MALYUTIN, PETITIONER

v.

CONDOLEEZZA RICE, FORMER SECRETARY OF THE UNITED STATES DEPARTMENT OF STATE, IN HER INDIVIDUAL CAPACITY ONLY, AND WILLIAM BURNS, FORMER AMBASSADOR OF THE UNITED STATES TO RUSSIA, IN HIS INDIVIDUAL CAPACITY ONLY, AND KURT AMEND, FORMER CONSUL GENERAL OF THE UNITED STATES AT THE UNITED STATES EMBASSY IN MOSCOW, RUSSIA, IN HIS INDIVIDUAL CAPACITY ONLY, AND DANIEL RUSSELL, FORMER DEPUTY CHIEF OF MISSION AT, AND/OR CHARGE D'AFFAIRES AD INTERIM OF, THE UNITED STATES EMBASSY IN MOSCOW, RUSSIA, IN HIS INDIVIDUAL CAPACITY ONLY, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Aleksandr Malyutin, non-lawyer who is proceeding *pro se*, respectfully petitions for a writ of certiorari to review

the order of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The order of the court of appeals (App. A, *infra*, 1a-2a) is unreported. The order denying Aleksandr Malyutin's petition for rehearing (App. D, *infra*, 12a) is unreported. The final order of the district court dismissing Aleksandr Malyutin's complaint against respondents and denying as moot all pending motions (App. B, *infra*, 3a) is unreported. The memorandum opinion of the district court (App. C, *infra*, 4a-11a) is unreported.

JURISDICTION

The order of the court of appeals was entered on July 6, 2010. A timely petition for panel rehearing was denied on September 3, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

LAWS INVOLVED

Second clause of 42 U.S.C. Sec. 1985(2) provides, in pertinent part:

> "...if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State ... with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the

right of any person, or class of persons, to the equal protection of the laws..."

42 U.S.C. Sec. 1985(3) further provides, in pertinent part:

"... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, ... the party so injured ... may have an action for the recovery of damages occasioned by such injury ... against any one or more of the conspirators."

42 U.S.C. Sec. 1986 provides, in pertinent part:

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured ... for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action ..."

STATEMENT OF THE CASE

1. This is a personal capacity lawsuit which involves civil claims brought by Aleksandr Malyutin ("Petitioner"), a citizen of the Russian Federation, against Condoleezza Rice ("Respondent Rice"), William Burns ("Respondent Burns"), Kurt Amend ("Respondent Amend"), and Daniel Russell ("Respondent Russell") (collectively - "Respondents").[1]

The basis for federal jurisdiction in the district court:

- jurisdiction is properly vested in the district court pursuant to 28 USC 1332(a)(2) because this action meets the following basic conditions: the matter in controversy exceeds $75,000, exclusive of interest and costs, and Plaintiff is a citizen of a foreign state, the Russian Federation ("Russia"), and none of Respondents is a citizen of the same state as Plaintiff;

- jurisdiction of the district court is invoked under 28 USC 1331 and the Constitution of the United States, Article III Section 2, because this action arises under the Constitution of the United States, and federal and state laws of the United States, and International Treaties of the United States that are binding on the US;

- jurisdiction of the district court is invoked under 28 USC 1343(a)(1)(2) over causes of action arising under 42 USC 1985(3) for violation of the second clause of 42 USC 1985(2), and 42 USC 1986.

On October 22, 2008, the U.S. District Court for the District of Columbia ("the district court") received Peti-

---

[1] All of Petitioner 's claims against Respondents were brought under civil statutes only, seeking monetary relief pursuant to the civil code.

tioner's Verified *Pro Se* Complaint for Monetary Relief (the "Complaint") against Respondents together with Verified Application to proceed without prepayment of fees. Later, the district court granted Petitioner *in forma pauperis* status and, on January 15, 2009, filed the Complaint. Then, the district court ordered the U.S. Marshals Service to effect service of process upon defendants sued in their personal capacities only.

On February 27, 2009, the district court held that, *inter alia*, (a) the basis of jurisdiction in this case was "Federal Question (U.S. Government Not a Party)", and (b) the Complaint had been filed under "U.S. Civil Statutes", and (c) the primary cause of action in this case was "Obstructing justice, neglect to prevent". (App. G, *infra*, 193a-201a.)

On March 2, 2009, Petitioner amended, as of right, the Complaint in order to include Respondent Russell and filed the Amended Verified *Pro Se* Complaint for Monetary Relief (the "First Amended Complaint"). (App. F, *infra*, 110a-192a.)

On September 22, 2009, Petitioner asked the district court for leave to file Second Amended Complaint in order to provide Respondents a better opportunity to address factual allegations against them. (App. E, *infra*, 13a-109a.)

Between February 3, 2009 and March 26, 2009, all Respondents were served with process by the U.S. Marshals Service, on the district court's order; Respondent Rice and Respondent Burns were served by the same U.S. Marshal, at the same time and place and in the same manner; Respondent Amend and Respondent Russell were served by the U.S. Marshals Service at the same place and in the same manner as Respondents Rice and

Burns. Defense counsel for Respondent Rice later admitted in writing that proper personal service of process was effected upon Respondent Rice and that Respondent Rice was represented in her personal capacity only. Respondents Burns, Amend, and Russell, sued in their personal capacities only, have never been represented by defense counsel and continue to proceed *pro se*.

On December 29, 2009, the district court held that the First Amended Complaint "is detailed and precise". (App. C, *infra*, 5a.)

More to the point in this case, Petitioner properly pleaded required legal elements of causes of action under *Bivens*[2], and under the second clause of 42 U.S.C. Sec. 1985(2) - as provided for by 42 U.S.C. Sec. 1985(3)[3], and

---

[2] *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

[3] Second part of 42 U.S.C. Sec. 1985(2) prohibits conspiracies to interfere with state judicial proceedings. This Court in *Kush v. Rutledge*, 460 U.S. 719 (1983), held that "[t]he second part of §1985(2) applies to conspiracies to obstruct the course of justice in state courts..." 460 U.S. at 725. In this case, 42 U.S.C. Sec. 1985(3) provides a cause of action for violation of the second clause of 42 U.S.C. Sec. 1985(2). To state a claim under the second clause of 42 U.S.C. Sec. 1985(2), "[t]he language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Kush v. Rutledge*, 460 U.S. 719, 725-26 (1986). "An allegation that the defendants are motivated by some class based discrimination is essential to the maintenance of a suit under the second portion of section 1985(2), which applies to obstruction of justice in state courts." *Ryland v. Shapiro*, 708 F.2d 967, 973 n. 7 (5th Cir.1983).

under 42 U.S.C. Sec. 1986, with required by *Iqbal*[4] detailed factual allegations against Respondents.

Bivens cause of action. First, Petitioner pleaded facts showing that he had certain constitutional rights[5], and that he had been deprived of such constitutional rights by Respondents acting under color of federal law[6]. Second, Petitioner pleaded facts showing that individual Respondents were personally involved in the constitutional violations[7]. Third, Petitioner properly alleged that

---

[4] *Ashcroft v. Iqbal*, No. 07-1015, 556 U.S. ___, 2009 WL 1361536 (May 18, 2009).

[5] See, *e.g.*, App. F, *infra*, 113a, 141a, 148a, 160a, 174a, etc.

[6] See, *e.g.*, App. F, *infra*, 132a-138a, etc.

[7] Petitioner served upon Respondents at least four written requests for access to court. See, *e.g.*, App. F, *infra*, 141a, 150a, 155a, 160a-161a, etc. Respondents personally confirmed to Petitioner receipt of written requests for access to court – by phone (see App. F, *infra*, 142a), and by means of return receipts (see App. F, *infra*, 150a), and via return emails (see App. F, *infra*, 150a). Respondents had no authority to adjudicate, or take actions on, Petitioner's written requests for access to court, to interfere with ongoing state court proceedings, and to perform functions of court judges. See, *e.g.*, App. F, *infra*, 114a, 145a-146a, 155a, 171a-173a, etc. Yet, Respondents reached certain agreement among themselves, by means of face-to-face and/or telephonic conversations and/or otherwise, and/or by exchanging certain documents - such as "telegram", "detailed report", "telegraphic report", "all pertinent documents", "post's airgram", "in the form prescribed in 2 FAM 280", and "[t]he post's report" - electronically and/or otherwise, in connection with Petitioner's several written requests for access to court. See, *e.g.*, App. F, *infra*, 151a-153a, 155a, 161a-162a, etc. As evidenced from the First Amended Complaint, Respondents Amend, Russell, and Burns were not prepared to vest all the responsibility for performance of certain unauthorized functions with themselves; Respondents Amend, Russell, and Burns were obviously "... in need of some authorization for taking further actions against mentally ill Plaintiff in connection

there were no alternative causes of action available to him for violation of his constitutional rights because the purpose of *Bivens* is only to provide an otherwise nonexistent cause of action against individual officers alleged to have acted unconstitutionally, thus, providing a cause of action to Petitioner who lacked any alternative remedy for violation of his constitutional rights[8]. Finally, to maintain a claim under *Bivens*, with all the facts and circumstances of this specific case in mind, Petitioner alleged that there were no special factors counseling hesitation in the absence of affirmative action by Congress and that *Bivens* cause of action and remedy was available to Petitioner[9].

Cause of Action, as provided for by 42 U.S.C. Sec. 1985(3), for violation of the second clause of 42 U.S.C. Sec. 1985(2). First, Petitioner pleaded facts showing that

---

with his" several requests for access to court (see, *e.g.*, App. F, *infra*, 145a, 157a, etc.) and turned to Respondent Rice for advice and instructions. In light of the fact that Respondent Rice had substantive and coordinating responsibility over issues of immunities of the U.S. representatives abroad and was a superior to other Respondents by virtue of her rank, status, and higher position, Respondent Rice provided to other Respondents certain instructions and/or directives on what to do and how to do it in connection with Respondents' actions against Petitioner and his state court judicial proceedings. Such instructions boiled down to, *inter alia*, "...ignore [all] Plaintiff's legal warnings altogether..." See, *e.g.*, App. F, *infra*, 153a, 163a, 170a, etc. Respondents "... upon having conferred with [each other] ... and harboring invidiously discriminatory animus towards mentally ill Plaintiff...", performing "... functions of the State Court Judge[s]...", adjudicated and took action on Petitioner's several written request for access to court. See, *e.g.*, App. F, *infra*, 143a, 145a, 146a, 158a, 171a, etc.

[8] See, *e.g.*, App. F, *infra*, 175a.

[9] See, *e.g.*, App. F, *infra*, 176a-177a.

Respondents, sued in their individual capacities only, conspired among themselves and reached meeting of the minds.[10] Second, Petitioner pleaded facts showing that Respondents conspired among themselves for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the state court.[11] Third, Petitioner pleaded facts showing that Respondents conspired with intent to deny to Petitioner, a member of a protected class for purposes of the second clause of 42 U.S.C. Sec. 1985(2), the equal protection of the laws and the equal privileges under the laws or with intent to injure Petitioner in his person or in his property because Petitioner was lawfully enforcing and/or attempting to enforce his rights to the equal protection of the laws and the equal privileges under the laws.[12] Fourth, Petitioner

---

[10] See, *e.g.*, App. F, *infra*, 142a, 145a-146a, 151a-153a, 156a-158a, 161a-164a, etc.

[11] See, *e.g.*, App. F, *infra*, 156a, etc.

[12] Petitioner was "...a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey." (See, *e.g.*, App. F, *infra*, 112a-113a, 147a-148a, 159a-160a, etc. Petitioner's membership in a protected class is properly alleged in the First Amended Complaint because between "January 23, 2007" (see App. F, *infra*, 120a-121a) and "May 23, 2008" (see App. F, *infra*, 165a), he was a litigant in ongoing state court proceedings, "[b]y August-September 2007, all the stress caused to [him] by the state court defendants' breach of the contract together with ensuing psychologically traumatic events and stressful litigation in a foreign country ... triggered the onset of a mental illness in Aleksandr Malyutin that had no physical cause" (see App. F, *infra*, 129a), while he was in the U.S., Plaintiff "...spoke via telephone with his friend's mother who was a doctor in Russia ... described to her his symptoms, and sought her advice; she advised [him] that his condition looked to her like a mental illness..." (*Id.*), Petitioner conducted "his own research in connection with his condition and [consulted] with, *inter alia*, the

pleaded facts showing that there was an act in furtherance of Respondents' conspiracy.[13] Fifth, Petitioner pleaded facts showing that Respondents actually injured Petitioner in his person or in his property or deprived him of his rights to the equal protection of the laws and the equal privileges under the laws.[14]

Cause of Action, as provided for by 42 U.S.C. Sec. 1986. First, Petitioner stated a valid claim under 42 U.S.C. Sec. 1986 because Petitioner had stated a valid claim for relief under 42 U.S.C. Sec. 1985, see, *supra*, herein. Second, 42 U.S.C. Sec. 1986, generally speaking, provides a cause of action for recovery against anyone who with knowledge of a Section 1985 conspiracy and the power to prevent its violation, neglects or refuses to do

---

Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; [his] condition was best described by the medical term "bipolar disorder"" (*Id.*), "[i]n October 2007, Aleksandr Malyutin made certain plans to visit Russia ... to seek professional help in connection with his mental illness that he had developed over a period of one year..." (see App. F, *infra*, 130a), "[u]pon arrival to Russia and prior to November 27, 2007, Plaintiff sought medical help in connection with his condition and was repeatedly advised that his condition was a serious mental illness..." (see App. F, *infra*, 141a), and "[i]t is undisputed that a class of mentally ill persons seeking justice in courts of the state of New Jersey is a protected class for purposes of the second clause of 42 USC 1985(2)." (See App. F, *infra*, 178a.)

[13] The First Amended Complaint properly alleges facts showing that there were numerous acts in furtherance of Respondents' conspiracy between, approximately, November 29, 2007, and May 23, 2008. See, *e.g.*, App. F, *infra*, 145a-146a, 150a-153a, 156a-158a, 160a-166a, etc.

[14] See, *e.g.*, App. F, *infra*, 160a, 166a, 168a, 187a, etc.

so. Petitioner showed the existence of a Section 1985 civil conspiracy among Respondents (see, *supra*).[15]

The First Amended Complaint also alleges that unknown named U.S. Consular officers, without conferring or conspiring with anybody else or with each other, each performed a discretionary act within the scope of their authority and official responsibilities, and that none of Respondents took part in such discretionary decision.[16]

REASONS FOR GRANTING THE PETITION

The court of appeals held that the detailed and precise complaint, which pleads essential factual allegations and required legal elements of individual-capacity claims under *Bivens*, and under the second clause of 42 U.S.C. Sec. 1985(2) - as provided for by 42 U.S.C. Sec. 1985(3), and under 42 U.S.C. Sec. 1986, against cabinet-level officers and other high-ranking officials - in this case, the former Secretary of the United States Department of State, and the former Ambassador of the United States to Russia, and the former Consul General of the United States to Russia, and the former Deputy Chief of Mission

---

[15] Respondent Rice and other Respondents, by virtue of their official status, had power to prevent and/or aid in preventing the commission of wrongs against Petitioner, yet they neglected and/or refused so to do. See, *e.g.*, App. F, *infra*, 152a-153a, 162a-163a, etc. Respondents are liable to Petitioner, who got injured, for all damages caused to him by such wrongful acts. Respondents "by reasonable diligence could have prevented such [Petitioner's] damages and they had plenty of time to take such steps, yet they willfully refused to do so and, therefore, [Respondents] are guilty of such wrongful neglect and/or refusal." See App. F, *infra*, 183a.

[16] See App. F, *infra*, 147a, 158a-159a.

of the United States Embassy in Russia – may, and should, be dismissed based on the fact that some unknown named non-party much-lower-level subordinate official of the United States Department of State made a discretionary and non-reviewable decision in which such cabinet-level officers and other high-ranking officials took no part. The decision of the court of appeals effectively holds that high-ranking officials - including Cabinet officers - may not be held liable in suits under *Bivens*, and under the second clause of 42 U.S.C. Sec. 1985(2) - as provided for by 42 U.S.C. Sec. 1985(3), and under 42 U.S.C. Sec. 1986, based on a theory that such cabinet-level officers cite certain discretionary and non-reviewable decision made by unknown named non-party subordinate officials without participation of such cabinet-level officers.

This case thus presents a crucially important question concerning the scope of the protection that high-ranking government officials may avail themselves of while performing non-discretionary functions. Whether mere presence of a discretionary and non-reviewable decision, made by unknown named non-party subordinate officials without participation of cabinet-level officers and other high-ranking officials, is sufficient for such cabinet-level officers' motion to dismiss an action, brought against such cabinet-level officers and other high-ranking officials under *Bivens*, and under the second clause of 42 U.S.C. Sec. 1985(2) - as provided for by 42 U.S.C. Sec. 1985(3), and under 42 U.S.C. Sec. 1986, to be granted and for the detailed and precise complaint to be dismissed.

The decision of the United States Court of Appeals for the District of Columbia Circuit could have significant, adverse practical consequences. The startling logic em-

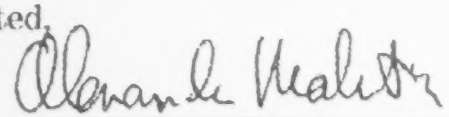
ployed by the court of appeals effectively sanctions performance by high-ranking officials - including Cabinet officers - of non-discretionary functions that have never been authorized by the Congress, Constitution, or laws of the United States as long as such cabinet-level officers cite a discretionary and non-reviewable decision made without their participation by unknown named non-party subordinate officials. Thus, the United States Court of Appeals for the District of Columbia Circuit's decision conflicts with this Court's holdings in *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) that the political branch's plenary power is "subject to important constitutional limitations" and in *INS v. Chadha*, 462 U.S. 919, 941-42 (1983) (stating that Congress's plenary power over immigration may be carried out only by "constitutionally permissible means").

The court of appeals decision producing that unsettling result warrants this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



ALEKSANDR MALYUTIN
Self-Represented

Davydkovskaya St., 12/2-49
Moscow, Russia 121352
+1 (718) 715-1390

November 13, 2010

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 10-5015

September Term 2009
1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, APPELLANT
v.
CONDOLEEZZA RICE, SECRETARY OF THE U.S. DEPARTMENT OF STATE, IN HER INDIVIDUAL CAPACITY, ET AL., APPELLEES.

Filed: July 6, 2010

ORDER

Before: Rogers, Tatel, and Griffith, Circuit Judges

Upon consideration of the motion for summary affirmance, the response thereto, and the reply; and the motion for leave to file a sur-reply, the opposition thereto, and the lodged sur-reply, it is

ORDERED that the motion for leave to file a sur-reply be denied. Appellant has not demonstrated the filing of a sur-reply is warranted. It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Although appellant asserts he is challenging a denial of his request for access to the state court rather than the denial of his application for a visa, determining whether appellant is entitled to damages from appellees would ultimately require reviewing the decision to deny appellant a visa. That decision is clearly unreviewable, however. See *Bruno v. Albright*, 197 F.3d 1153, 1158-59 (D.C. Cir. 1999). Accordingly, the district court properly dismissed appellant's complaint.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, PLAINTIFF
v.
CONDOLEEZZA RICE ET AL., DEFENDANTS.

[Filed: December 30, 2009]

FINAL ORDER

For the reasons stated in the company in memorandum opinion, it is hereby ORDERED that the complaint is DISMISSED for lack of subject matter jurisdiction; and it is further ORDERED that all pending motions are denied as moot. This is a final, appealable order. See Fed. R. App. P. 4.

/s/
Emmet G. Sullivan
United States District Judge
Dated: December 29, 2009

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, PLAINTIFF
v.
CONDOLEEZZA RICE ET AL., DEFENDANTS.

[Filed: December 30, 2009]

MEMORANDUM OPINION

This matter is before the Court on a motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction or, alternatively, under Rule 12(b)(6) for failure to state a claim upon which relief may be granted. Because proceeding on this complaint would require judicial review of a consular decision to deny a visa application - a decision that is exempt from judicial review - the complaint will be dismissed for lack of subject matter jurisdiction.

BACKGROUND

Plaintiff, Aleksandr Malyutin, is a Russian national and non-lawyer who is proceeding *pro se* and *in forma pauperis* in this matter. The 74-page, 156-paragraph *pro se* complaint is detailed and precise. *See generally*, Amended Verified *Pro se* Complaint for Monetary Relief ("Compl.") Summarizing liberally, it alleges that while the plaintiff was prosecuting, *pro se*, a business contract dispute in state court in New Jersey, *id.* ¶¶ 17 *et seq.*, he left the United States on November 24, 2007, to return home to Russia, *id.* ¶ 51, and that when he tried a few days later to obtain a B1/B2 visa to return to the United States, the U.S. Consul General denied his application. *Id.* ¶ 60. Two months later in early 2008, the plaintiff re-applied for a B1/B2 visa, was re-interviewed, and was again denied a visa. *Id.* ¶¶ 78, 83. Because he neither appeared in person nor obtained counsel to represent him, his *pro se* New Jersey court action was eventually dismissed. *Id.* ¶ 95.

Plaintiff sues five employees of the United States Department of State, each in their personal capacity only, for money damages. The sole nexus between the plaintiff and the defendants is the denial of his application for a visa to enter the United States. Asserting a right of action under both *Bivens*[1] and 42 U.S.C. § 1985(3), the complaint alleges that the defendants conspired in violation of the second clause of 42 U.S.C. § 1985(2) to deter him from testifying in the matter pending before the New Jersey state court, and that the defendants, or at

---

[1] *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

least some of them, neglected in violation of 42 U.S.C. § 1986 to prevent this alleged conspiracy to deprive him of his civil rights. Compl. ¶¶ 1, 7; *see also id.* at 61 (identifying as a second cause of action the "[v]iolation of the second clause of 42 [U.S.C. §] 1985(2), as provided for by 42 [U.S.C. §] 1985(3)"), 66, 71-72 (listing Counts I, V, and VI). The complaint also asserts state law causes of action and a cause of action under an international treaty. *See id.* at 67-70, 72. Plaintiff seeks compensatory damages of more than $100 million, exemplary damages in excess of $100 million, and attorneys fees in excess of $500,000. *Id.* at 74.

The complaint alleges facts that establish the following, among other things:

that plaintiff had entered the United States on a visa twenty times between 1993 and 2007, *id.* ¶¶ 18, 21, 22;

that plaintiff had established a United States Social Security number, *id.* ¶ 13;

that in the fourteen years from 1993 through 2006, plaintiff spent 862 days (approximately 17% of the time) in the United States, and that in 2007 he spent 311 days (approximately 85% of the year) in the United States, *id.* ¶¶ 13, 17, 18, 21;[2]

that plaintiff had not been gainfully employed in 2007, was dependent on family and friends for financial support, and was engaged full time in litigating the New Jersey state court action, *id.* ¶¶ 57 (c) & (d);

---

[2] These figures are derived from the complaint's allegation that in the fifteen years from 1993 through 2007, the plaintiff spent 1173 days in the United States, id. ¶ 13, and the dates of his arrivals in and departures from the United States in 2007, id. ¶¶ 17, 18, 21.

that plaintiff advised consular authorities that he suffered from a serious mental disorder that was not dangerous, *id.* ¶¶ 54, 57(i);

that plaintiff's girlfriend had overstayed her summer work and program travel visa to the United States in 2007, that plaintiff was the father of his girlfriend's unborn child, and that his pregnant girlfriend was granted a valid, unexpired visa to re-enter the United States, *id.* ¶ 28;

that most recently plaintiff had overstayed his United States visa, which had expired in August 2007, *id.* ¶¶ 22, 36;

that plaintiff discussed his pending New Jersey litigation with the two unidentified members of the consular staff who interviewed him in connection with his visa application, *id.* ¶¶ 59, 81; and

that the two consular staff members who denied plaintiff's visa application in late 2007 and early 2008 each advised him that the determination was based on a conclusion that plaintiff's ties to Russia were not strong enough, *id.* ¶¶ 60, 83.

The instant motion to dismiss followed, asserting that this court lacks subject matter jurisdiction and that the complaint fails to state a claim upon which relief may be granted.[3]

---

[3] Because the Court determines that it does not have subject matter jurisdiction over this action, it expressly does not reach the merits of any of the multiple grounds the defendant offers in her alternative motion under Rule 12(b)(6) to dismiss the complaint for failure to state a claim upon which relief may be granted.

DISCUSSION

A federal district court's initial obligation is to ascertain its subject matter jurisdiction. *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13 (D.D.C. 2001) (a court has an "affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority"). Federal courts are courts of limited jurisdiction, possessing only the power conferred by the Constitution and statutes. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). It is not presumed that a cause of action lies within the federal court's limited jurisdiction, and the plaintiff bears the burden of establishing jurisdiction. *Id.*; *Adelman v. UAL, Inc.*, 932 F. Supp. 331, 332 (D.D.C. 1996).

In considering a Rule 12(b)(1) motion, a court must accept as true all factual allegations contained in the complaint, and the nonmovant is entitled to the benefit of all favorable inferences that can reasonably be drawn from the alleged facts. *See Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993); *Artis v. Greenspan*, 158 F.3d 1301, 1306 (D.C. Cir. 1998). A court may also consider "undisputed facts evidenced in the record," *Coalition for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003), and material outside the pleadings, *Hunter v. District of Columbia*, 384 F. Supp. 2d 257, 259-60 (D.D.C. 2005). In addition, a "'plaintiff's factual allegations in the complaint . . . will bear closer scrutiny in resolving a 12(b)(1) motion' than in resolving a 12(b)(6) motion for failure to state a claim." *Grand Lodge*, 185 F. Supp. 2d at 13-14 (quoting 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1350).

It is undisputed that the decision to deny a visa is not subject to judicial review. *See* Mem. of Points and Authorities in Support of Def.'s Motion to Dismiss the Complaint at 5-8; Pl.'s Opp'n at 3; Def.'s Reply at 2-3. Indeed, there can be no serious debate about the matter. As the Supreme Court has stated:

> The power of Congress to exclude aliens altogether from the United States or to prescribe the terms and conditions upon which they may come into this country, and to have its declared policy in that regard enforced exclusively through executive officers without judicial intervention, is settled by our previous adjudications.

Lem Moon Sing v. United States, 158 U.S. 538, 547 (1895); *see also Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (same). "[T]he immigration laws preclude judicial review of consular visa decisions and ... the doctrine of consular nonreviewability remains intact ...." *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1162-63 (D.C. Cir. 1999). This rule applies broadly. It applies even where it is alleged that the consular officer did not follow regulations, *see Burrafato v. Dep't of State*, 523 F.2d 554 (2d Cir. 1975), that the pertinent regulations are invalid, *see Ventura-Escamilla v. INS*, 647 F.2d 28 (9th Cir. 1981), and that the decision was based on factual or legal error, *see Centeno v. Shultz*, 817 F.2d 1212, 1213 (5th Cir. 1987).

More to the point in this case, the doctrine also applies where a plaintiff attempts to circumvent the doctrine by claiming the he is not seeking a review of the consular officer's decision, but is challenging some other, related aspect of the decision. "Such attempts to manufacture

subject matter jurisdiction by recasting a complaint have consistently been rejected by the courts." *Chun v. Powell*, 223 F Supp. 2d 204, 206-07 (D.D.C. 2002); *see, e.g., Saavedra Bruno v. Albright*, 197 F.3d at 1162-63 (applying the doctrine where the plaintiff alleged a cause of action under the Administrative Procedure Act, 5 U.S.C. §701 *et seq.*); *Van Ravenswaay v. Napolitano*, 613 F. Supp. 2d 1, 3 (D.D.C. 2009) (applying the doctrine where plaintiff argued that he was challenging the authority of the Secretary of State, not the consular decision); *El-Hadad v United States*, 377 F. Supp. 2d 42, 46-47 (D.D.C. 2005) (applying the doctrine where plaintiff attempted to circumvent it by bringing a petition for habeas corpus relief); *Al-Makaaseb General Trading Co., Inc. v. Christopher*, 1995 WL 110117 * 1 (S.D.N.Y. 1995) (applying the doctrine where plaintiff alleged that the consular decision constituted a violation of his due process rights). The doctrine has also been applied where the applicant seeks admission to the United States for the express purpose of participating in court proceedings. *See, e.g., Semiani v. United States*, 2009 WL 498051, *1 (D.D.C. Feb. 26, 2009); *El-Hadad v United States*, 377 F. Supp. 2d at 45, 47.

Here, the plaintiff attempts to circumvent the doctrine of consular nonreviewability by arguing that he does not seek review or reversal of the visa decision, but instead sues the defendants for obstructing his access to the New Jersey state court. Pl.'s Opp'n at 6. This argument is untenable. Plaintiff's case rests on the theory that the alleged conspiracy that produced the visa decision was the injury that proximately caused his damages. Absent judicial review, there can be no judicial determination that the alleged conspiracy that produced the visa deci-

sion constitutes a legal injury that proximately caused the plaintiff's damages. Therefore, because judicial review of the visa decision is foreclosed by the doctrine of consular nonreviewability, so too is the case plaintiff has presented in his complaint. Accordingly, the complaint will be dismissed for lack of subject matter jurisdiction, and all other pending motions will be denied as moot.

A separate order accompanies this memorandum opinion.

_____/s/_____
Emmet G. Sullivan
United States District Judge
Dated: December 29, 2009

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Case No. 10-5015

September Term 2009
1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, APPELLANT
v.
CONDOLEEZZA RICE, SECRETARY OF THE U.S. DEPARTMENT OF STATE, IN HER INDIVIDUAL CAPACITY, ET AL., APPELLEES.

Filed: September 3, 2010

ORDER

Before: Rogers, Tatel, and Griffith, Circuit Judges

Upon consideration of the petition for rehearing, it is ORDERED that the petition be denied.

Per Curiam

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, PLAINTIFF
v.
CONDOLEEZZA RICE ET AL., DEFENDANTS.

[Filed: September 22, 2009]

PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Pursuant to Fed.R.Civ.P. 15(a)(2) and LCvR 15.1 of the Local Rules of this Court, non-prisoner *pro se in forma pauperis* Plaintiff Aleksandr Malyutin ("Plaintiff") hereby respectfully requests leave of court to file[1] second amended complaint[2] in the above-captioned matter. On September 02, 2009, Plaintiff attempted to contact Defendant William Burns, Defendant Daniel Russell, and Defendant Kurt Amend via regular mail and defense

---

[1] Subject to the condition that the court, upon consideration of Defendant Condoleezza Rice's pending motion to dismiss, allows the instant matter to proceed further.

[2] Proposed second amended complaint is attached hereto as Exhibit A.

counsel for Defendant Condoleezza Rice ("Defendant Rice") via email regarding this request. Plaintiff did not receive a response from Defendant William Burns, Defendant Daniel Russell, and Defendant Kurt Amend in time for filing today while defense counsel for Defendant Rice advised Plaintiff via return email that Defendant Rice would oppose the relief requested.

In support of this request, Plaintiff now says. On January 15, 2009, Plaintiff filed his original complaint against Defendants in their individual capacities alleging violation of his constitutional rights, obstruction of justice and neglect to prevent, all pursuant to applicable civil statutes and in connection with Plaintiff's judicial proceedings in the Bergen County Superior Court of New Jersey, Law Division. On March 02, 2009, Plaintiff amended his original complaint once as a matter of course primarily in order to add[3] Defendant Daniel Russell.

A. The need to conserve judicial and parties' resources

Should the court grant Defendant Rice's pending motion to dismiss and close this case, then all other now pending motions, including this one, would be terminated as moot.

Should the court deny Defendant Rice's pending motion to dismiss and allow the instant matter to proceed further, then (i) the court would be able to decide all other now pending motions, including this one, at the same

---

[3] Pursuant to Fed.R.Civ.P. 15(a)(1)(A) and in compliance with Fed.R.Civ.P. 15(c).

time, and (ii) Defendants would be required to prepare and file their responsive pleadings. The proposed second amended complaint, which is attached hereto as Exhibit A, provides each and all Defendants in the above-styled matter a better opportunity to respond to allegations contained in complaint and operates to avoid the need for Defendants to prepare and file their answers to the first amended complaint and then to the second one.

B. Relation back of second amended complaint

Plaintiff's claims against Defendants are not barred by respective statutes of limitations and relate back to the first amended complaint under Fed.R.Civ.P. 15(c).

In considering Rule 15(c), "the emphasis is not on the legal theory of the action, but whether the specified conduct of the defendant, upon which the plaintiff is relying to enforce his amended claim, is identifiable with the original claim." *F.D.I.C. v. Jackson*, 133 F.3d 694, 702 (9th Cir. 1998) (quoting *Gelling v. Dean* (*In re Dean*), 11 B.R. 542, 545 (9th Cir. BAP 1981), aff'd, 687 F.2d 307 (9th Cir. 1982)). The court must determine whether the two complaints "share a common core of operative facts sufficient to impart fair notice of the transaction, occurrence, or conduct called into question." *Id.* (quoting *Martell v. Trilogy Limited*, 872 F.2d 322, 327 (9th Cir. 1989)).

Plaintiff's second amended complaint relates back to his first. Plaintiff asserts the same legal theory that he asserted in his first amended complaint. The underlying events are also the same, as are the violations Plaintiff claims to have suffered. The difference is between (a) the facts that would further support an allegation of Defendants' meeting of the minds and conspiracy against Plain-

tiff, and (b) the facts that would further support an allegation of Defendants' personal involvement, upon which Plaintiff premised his first amended complaint. These facts "share a common core" sufficient to give notice to Defendants and relate all Plaintiff's claims against Defendants back to the filing of his first amended complaint.

C. The court has broad discretion to grant this motion for leave to amend

This Court may deny a motion to amend if it finds "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962). A motion to amend a complaint is futile "if the proposed claim would not survive a motion to dismiss." *James Madison Ltd. v. Ludwig*, 82 F.3d 1085, 1099 (D.C. Cir. 1996). "Within these bounds, a district court has discretion to grant or deny leave to amend under Rule 15(a)." *Atchinson v. District of Columbia*, 73 F.3d 418, 426 (D.C. Cir. 1996).

Should the court deny Defendant Rice's pending motion to dismiss and allow the instant matter to proceed further, then it would mean that this motion to amend is not a futile one because the proposed second amended complaint contains the same claims as the first.

The proposed second amended complaint operates to avoid undue delay for Defendants in preparing their responsive pleadings, and cures certain deficiencies of the first amended complaint. Defendants would suffer no

prejudice by virtue of allowance of the amendment. Pursuant to Fed.R.Civ.P. 15(a), "[t]he court should freely give leave when justice so requires."

D. The *Iqbal* decision cited by Defendant Rice[4]

In *Ashcroft v. Iqbal*, the court said that plaintiffs must include in their initial pleadings substantial factual assertions that give "facial plausibility" to their claims which is a major shift from the traditional "notice pleading" requiring only a simple statement of the case against the defendant. As evidenced from the proposed second amended complaint, Plaintiff included substantial factual assertions that give "facial plausibility" to all of his claims against Defendants.

[4] See PACER Doc. #27, Exhibit A.

Conclusion

For all of the foregoing reasons, Plaintiff respectfully requests that this motion for leave to file second amended complaint be granted.[5]

Respectfully submitted,

_____/s/_____
ALEKSANDR MALYUTIN
Pro Se Plaintiff
Davydkovskaya Street, 12/2-49
Moscow, Russia 121352
+7.915.409.8012 direct dial
+1.718.715.1390 direct fax
h2a_program@yahoo.com
cutravel@rambler.ru
plaintiff.prose@yahoo.com

Dated: Moscow, Russia
September 22, 2009

[5] Pursuant to LCvR 7(c) of the Local Rules of this Court, a proposed order consistent with this motion is attached herewith.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, DAVYDKOVSKAYA ST., 12/2-49, MOSCOW, RUSSIA 121352, +7 (915) 409-8012,
PLAINTIFF

v.

CONDOLEEZZA RICE WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, SECRETARY OF THE US DEPARTMENT OF STATE, INDIVIDUALLY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HER AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; WILLIAM BURNS WHO WAS, AT CERTAIN TIMES RELEVANT TO THIS COMPLAINT, THE US AMBASSADOR TO RUSSIA, INDIVIDUALLY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; DANIEL RUSSELL WHO WAS, AT CERTAIN TIMES RELEVANT TO THIS COMPLAINT, DEPUTY CHIEF OF MISSION AT, AND/OR CHARGE D'AFFAIRES AD INTERIM OF, THE US EMBASSY IN MOSCOW, RUSSIA, INDIVIDUALLY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE

OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; KURT AMEND WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, THE US CONSUL GENERAL AT THE US EMBASSY IN MOSCOW, RUSSIA, INDIVIDUALLY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; UNKNOWN NAMED WHITE FEMALE WHO WAS, AT CERTAIN TIMES RELEVANT TO THIS COMPLAINT, THE US CONSULAR OFFICER AT THE US EMBASSY IN MOSCOW, RUSSIA, INDIVIDUALLY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HER AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; UNKNOWN NAMED WHITE MALE WHO WAS, AT CERTAIN TIMES RELEVANT TO THIS COMPLAINT, THE US CONSULAR OFFICER AT THE US EMBASSY IN MOSCOW, RUSSIA, INDIVIDUALLY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), US DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310, DEFENDANTS.

[Filed: September 22, 2009]

SECOND AMENDED VERIFIED *PRO SE* COMPLAINT FOR MONETARY RELIEF

Plaintiff, for his second amended verified *pro se* complaint for monetary relief ("complaint"), says and alleges as follows against the above-styled Defendants:

I. INTRODUCTION

1. This is a personal capacity lawsuit brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 US 388 (1971), second clause of 42 USC 1985(2)[1], as well as pursuant to 42 USC 1986 by a self-represented indigent Plaintiff Aleksandr Malyutin who is, and/or was at all times relevant to this complaint, a mentally ill person of, nevertheless, sound mind and judgment, and who has never been judicially adjudicated incompetent, and who has never lacked standing to appear *pro se* in formal judicial proceedings or capacity to sue and be sued, and whose present status in relation to the United States is that of an extraterritorial nonresident alien with present whereabouts outside of the US ("Plaintiff"), who has, however, voluntarily accepted significant societal obligations in, and developed significant

[1] Second part of 42 USC 1985(2) prohibits conspiracies to interfere with state judicial proceedings. In *Kush v. Rutledge*, 460 U.S. 719 (1983), the Supreme Court of the United States held that "[t]he second part of §1985(2) applies to conspiracies to obstruct the course of justice in state courts..." 460 U.S. at 725. In the present suit, 42 USC 1985(3) provides Plaintiff a cause of action for Defendants' violation of the second clause of 42 USC 1985(2).

and substantial voluntary connections with the US, and who has sufficient contact with the US legal system, seeking judgment against Defendants, jointly and severally, in the form of monetary relief payable from Defendants' US-based personal assets, for damages resulting from a series of certain actions, including conspiratorial ones, Defendants knowingly and willfully took acting under color of federal authority and being personally involved, yet in clear absence of any jurisdiction for taking such actions or performing such functions, against Plaintiff by interfering with, obstructing, neglecting to prevent obstruction of justice, and eventually defeating the due course of justice in state judicial proceedings in the US where Plaintiff had been seeking justice beginning from January 2007 in his person as a *pro se* indigent litigant, and where none of Defendants was even a party, obstructing the state court order and preventing Plaintiff from performing his duties under such order, endeavoring to destruct and eventually causing destruction of Plaintiff's material evidence in connection with, and altering the outcome of, state judicial proceedings, violating a number of times certain clearly established rights to which Plaintiff was entitled by virtue of his substantial voluntary connections with the US[2] and which were

---

[2] In *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the Supreme Court of the United States held that "...aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." 494 U.S. at 271. "The Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores. But once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders." Id. In *Martinez-Aguero v. Gonzalez*, 459 F.3d

guaranteed to him by the due process clauses of the Fifth and Fourteenth Amendments and by the equal protection clause of the Fourteenth Amendment to the US Constitution, as well as by federal and state laws and International Treaties of the United States of America whereby Plaintiff has been injured in his person and in his property, deprived of the equal protection of the laws and the equal privileges under the laws, to which Plaintiff was entitled by virtue of his substantial voluntary connections with the US, and suffered class-based discrimination on account of Plaintiff's exercise of his fundamental rights being a member of a protected class[3] of mentally ill persons seeking justice in courts of the state of New Jersey. (emphasis added.)

2. This is not, however, a purely personal, non-official lawsuit because it involves a systematic performance of certain functions by each and all Defendants, beyond the scope of their authority and clearly in excess of their jurisdiction and official responsibilities, while they acted under color of federal authority. In this connection,

---

618 (5th Cir. 2006) the Court held that "[t]here may be cases in which an alien's connection with the United States is so tenuous that he cannot reasonably expect the protection of its constitutional guarantees..."

[3] To state a claim under the second clause of §1985(2), "[t]he language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Kush v. Rutledge*, 460 U.S. 719, 725-26 (1986). "An allegation that the defendants are motivated by some class based discrimination is essential to the maintenance of a suit under the second portion of section 1985(2), which applies to obstruction of justice in state courts." *Ryland v. Shapiro*, 708 F.2d 967, 973 n. 7 (5th Cir.1983).

Plaintiff does not challenge adjudication of his several visa applications and respective denials to grant him a new entry visa to the US, as described *infra* at pertinent parts of this complaint. This complaint does not urge the court to review or reverse respective consular visa decisions that repeatedly denied Plaintiff a new entry visa to the United States and that are merely present in, and are part of, this lawsuit, see *infra* herein. Plaintiff fully understands the fact that adjudication of his visa applications and respective denials to grant him a new entry visa to the US constitute discretionary acts performed by certain Defendants within the scope of their authority and that such discretionary acts are, due to their nature, nonreviewable by the court and beyond the court's jurisdiction. Just like the court cannot order Defendants to issue a new entry visa to the US to Plaintiff, the doctrine of consular nonreviewability[4] does not, and cannot, bar the court from deciding to properly redress legally cognizable and recoverable damages, caused by Defendants to Plaintiff, by entering a judgment against Defendants, jointly and severally, in excess of one hundred million US dollars, payable from Defendants' US-based personal assets, as Plaintiff lawfully demands in this complaint. The substance, and the basis, of this complaint is not, and cannot be, a review or reversal of respective consular visa decisions denying an entry visa to Plaintiff, as described *infra* herein, because such review or reversal,

---

[4] Under the facts and circumstances of the instant matter, see *infra* herein, the doctrine of consular nonreviewability is totally inapposite here because, *inter alia*, this complaint does not, and no part of it can be construed to, urge the court to review or reverse respective consular visa decisions that repeatedly denied Plaintiff a new entry visa to the United States.

besides from being precluded by law, may in no way redress enormous pecuniary damages inflicted on Plaintiff by Defendants, and provide the monetary relief demanded by Plaintiff.

3. In order to help each and all Defendants in the instant matter to better understand the substance and the basis of this complaint, Plaintiff urges Defendants to consider the following situation: suppose, one of the US consular officers at one of the US Embassies overseas wantonly decides to grab a knife and stabs to death several peaceful visa applicants and then denies such applicants' visa applications. Such US consular officer's decision to deny respective visa applications would be a nonreviewable consular visa decision and the court would be precluded by law to review or reverse it. However, it would be wrong to assume that such US consular officer's wanton decision to grab a knife and stab to death several visa applicants was inextricably intertwined with the nonreviewable consular visa decision to adjudicate visa applications in the negative and deny US entry visas because in such case it would be possible to come to an absurd conclusion that such US consular officer would be shielded by qualified immunity and bringing a lawsuit against her/him would be futile despite the wrongdoing committed. In this absurd, impossible, grotesque, and fictional situation, the wanton decision of the US consular officer to grab a knife and stab to death several peaceful visa applicants would have nothing to do with the nonreviewable consular visa decision to deny US entry visas and, therefore, could not reasonably stem from, or be based on, it. (emphasis added.) What's even worse is that in the instant matter, apart and independently from speedy adjudication of Plaintiff's two formal visa applica-

tions[5] by certain Defendants, each and all Defendants conspired, agreed among themselves by certain means, came to the meeting of the minds, employed an egregious pattern of conduct, were proactively and systematically interfering with, obstructing, and neglecting to prevent obstruction of justice, and, eventually, defeated the due course of justice in state judicial proceedings[6] where Plaintiff was a *pro se* indigent litigant, all as properly alleged *infra* herein; systematic performance of such Defendants' functions in connection with Defendants' obstruction of justice in state court proceedings, as well as such functions themselves, have nothing to do with speedy adjudication of Plaintiff's two formal visa applications by certain Defendants. None of Defendants in the instant matter may take advantage of the protection afforded by reason of their official position to systematically perform functions that stand outside of the scope of Defendants' authority and that were never authorized by the Congress, Constitution, or laws of the United States.

4. Plaintiff fully understands the fact, and hopes for that matter that Defendants too will come to such an understanding, that, *inter alia*, Defendants' discretion is not boundless irrespectively of the fact that Defendants have repeatedly, unequivocally, and defiantly demonstrated to Plaintiff that it is, and that Defendants may

---

[5] The fact is, it took minutes, not hours, days, or months, for Plaintiff's visa applications barcode #M1DQ124DCJ and barcode #E1FD1MSWW8 to be actually and finally adjudicated in the negative on November 29, 2007, and February 5, 2008, respectively, all as described *infra* herein.

[6] The fact is, it took several months, not minutes, hours, or days, for Defendants to actually and finally defeat the due course of justice in state judicial proceeding, all as described *infra* herein.

not perform functions of state and/or federal court judges in connection formal judicial proceedings in the United States. (emphasis added.) In this connection, Plaintiff reasonably believes and, therefore, friendly and respectfully notifies and advises each and all Defendants that their conduct has more than civilly actionable consequences and may violate US criminal statutes.

5. Aleksandr Malyutin demands, *inter alia*, that each and all Defendants address allegations of this complaint "to the satisfaction" of the self-represented indigent Plaintiff. (emphasis added; expression borrowed from INA 214(b), codified at 8 USC 1184(b).)

II. JURISDICTION AND VENUE

6. Jurisdiction of this Court is invoked under 28 USC 1331 and the Constitution of the United States, Article III Section 2, because this action arises under:

a) the Constitution of the United States; and
b) federal and state laws of the United States; and
c) International Treaties of the United States that are binding on the US.

7. Jurisdiction is properly vested in this Court pursuant to 28 USC 1332(a)(2) because this action meets the following basic conditions:

a) the matter in controversy exceeds $75,000, exclusive of interest and costs; and
b) Plaintiff is a citizen of a foreign state, the Russian Federation ("Russia"); and
c) none of Defendants is a citizen of the same state as Plaintiff.

8. Jurisdiction of this Court is further invoked under 28 USC 1343(a)(1)(2) over causes of action arising under:

a) 42 USC 1985(3) for violation of the second clause of 42 USC 1985(2); and

b) 42 USC 1986.

9. Jurisdiction of this Court is further invoked under 28 USC 1367 over Plaintiff's state law claims against Defendants necessary to disposition of the instant case.

10. This Court has authority to award attorney's fees, as part of the costs, pursuant to 42 USC 1988(b).

11. Venue is proper in this judicial district under 28 USC 1391(b)(3).

III. PARTIES

A. Plaintiff

12. Born in 1972 in Moscow, Aleksandr Malyutin has always been a citizen of Russia, and has never been a citizen of any other country. He is a native of Moscow, Russia and currently resides there; his native language is Russian. Aleksandr Malyutin is a 1994 graduate from one of the most prestigious Russian Universities, Moscow University for International Affairs (MGIMO), where he majored in Journalism and International Tourism. Aleksandr Malyutin has no formal legal education. Beginning from approximately 1993, Aleksandr Malyutin has been an independent self-employed person always personifying the spirit of entrepreneurship, creativity and adventure.

13. Prior to 2006, Aleksandr Malyutin (a) never experienced any symptoms of a mental illness, although he had certain predisposition to stress, (b) never had a mental illness diagnosable in accordance with the Diagnostic and Statistical Manual of Mental Disorders of the American

Psychiatric Association, and (c) was not a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey.

14. Between 1993 and 2007, Aleksandr Malyutin visited a number of foreign countries, including Finland, Germany, Great Britain, Holland, Indonesia, Ivory Coast, Japan, Philippines, Poland, Thailand, and the United States; during this time period, he visited the United States twenty times, each time on B1/B2 visas routinely issued to him by the US Embassy in Moscow, Russia (the "Embassy"). Between 1993 and 2007, Aleksandr Malyutin spent a total of approximately 1,173 days in the United States, both on business and for pleasure. Approximately in 1993-1994, Aleksandr Malyutin established his Social Security Number in the United States. Although a citizen of a foreign country with present whereabouts outside of the United States, Aleksandr Malyutin has voluntarily accepted significant societal obligations in, and developed significant and substantial voluntary connections with the United States which, according to abundant US case law, entitles him to, and invests him with, certain rights guaranteed by the US Constitution, federal and state laws to all people within the borders of the United States.

15. In September 2006, while he was in the United States, Aleksandr Malyutin formed an installment contract for sale (the "contract") with two American companies from the state of New Jersey (the "state court defendants") and actually started purchasing from them and shipping to his business partner in Russia, with whom Aleksandr Malyutin had a supply contract for that matter, certain expensive equipment manufactured and distributed in the United States by the state court de-

fendants. Prior to forming the contract, Aleksandr Malyutin conducted negotiations with both state court defendants via telephone and by means of his personal business meeting in Wyckoff, NJ with a president of one of the two New Jersey based companies; Aleksandr Malyutin properly advised the state court defendants about his particular requirements and needs, including, but not limited to the fact that the very existence of his business and his entire life depended on the state court defendants' proper performance; Aleksandr Malyutin received certain assurances for that matter from the state court defendants. (emphasis added). Aleksandr Malyutin played no role in the events that led to the state court defendants' breach of the contract; as a result of the state court defendants' constructive fraud and ensuing breach of the contract and despite a number of reasonable attempts by Aleksandr Malyutin to mitigate his damages for that matter, Aleksandr Malyutin (a) suffered catastrophic economic damages which reduced him to being absolutely destitute and forced him to turn to his friends and family for support in connection with his quest for justice in the US, (b) lost all his monies, (c) lost his only source of income, (d) lost his business, (e) lost his ability to pay his debts, (f) incurred exorbitant debt, and (g) suffered anxiety, rage, extreme terror, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, mental suffering, injury to reputation, and certain other noneconomic damages.

16. Under the then present circumstances, being unable to afford to retain a professional counsel[7] and in order to protect his life, vindicate his rights, and recover his exorbitant economic and noneconomic damages and despite, as Aleksandr Malyutin understands it now, serious health-related problems triggered by the state court defendants' breach of the contract, Aleksandr Malyutin was compelled to start his quest for justice in a foreign country and in a foreign language. (emphasis added; see further explanation *infra* at 16-17, ¶ 31, and at 17-18, ¶ 33.) In particular, Aleksandr Malyutin was compelled to start studying court language, applicable law, rules of court, rules of evidence, case law, NJ court system, and etc., personally preparing and then prosecuting his state court lawsuit all entirely by himself and without ever resorting to the so-called practice of ghostwriting or help of an attorney.

17. Aleksandr Malyutin has always been a self-employed person; starting from approximately the end of 2006, Aleksandr Malyutin employs himself full-time as a legal counsel in connection with judicial proceedings in the United States without any compensation for legal services he provides to himself and without any source of income; financial support of his friends and family for that matter has never been a source of free money for Aleksandr Malyutin and he will have to repay it within certain period of time upon completion of his litigation in the United States.

---

[7] In 2007, Plaintiff made several good faith attempts, by means of telephonic calls and his personal face-to-face meetings with certain lawyers in Hackensack, NJ, to secure *pro bono* counsel or counsel who would agree to a contingency fee arrangement. All such attempts, however, turned out to be fruitless.

18. On January 14, 2007, Aleksandr Malyutin arrived at John F. Kennedy Airport ("JFK") from Russia and, exercising a number of rights guaranteed to him by the Constitution, federal and state laws, and International Treaties of the United States, including, but not limited to the fundamental right of access to court which requires, *inter alia*, having access upon request, requested, *inter alia*, that certain agents of the US Department of Homeland Security (the "DHS") refrain from denying him access to the Bergen County Superior Court of New Jersey because Aleksandr Malyutin intended to personally file his *pro se* lawsuit with New Jersey state court against the state court defendants, prosecute and bring his case to trial in the United States appearing *pro se*. Being impressed, one of the agents of the DHS at JFK responded with supportive: "Go get'em!"

19. On January 14, 2007, Aleksandr Malyutin was admitted into the United States; it was his nineteenth visit to this country; his personal information and/or information about the purpose of his visit and/or certain other information was properly and routinely entered into, generally speaking, certain computer system containing certain information that was accessible to Defendants and that was actually used by Defendants in connection with their actions against Plaintiff, as alleged *infra* herein. Aleksandr Malyutin remained in the United States until March 24, 2007.

20. Between January 14, 2007 and January 23, 2007, Aleksandr Malyutin was finishing his exhausting work, that he had started in the end of 2006, of preparing his *pro se* state court complaint that he intended to file with New Jersey state court; on January 23, 2007, Aleksandr Malyutin personally came to the Bergen County Superi-

or Court of New Jersey (the "state court") located in Hackensack, NJ and filed his *pro se* lawsuit against the state court defendants in Law Division. Despite certain *prima facie* deficiencies, the state court accepted Aleksandr Malyutin's *pro se* state court complaint, assigned that civil lawsuit Docket No. BER-L-0569-07 (the "Docket #1"), assigned it to a team of Hon. Menelaos W. Toskos, J.S.C., and set January 10, 2008 as discovery end date. Therefore, on January 23, 2007, Aleksandr Malyutin became a *pro se* litigant in state judicial proceedings in the US.

21. After having been properly served with process and prior to filing responsive pleadings, president of one of the American companies, the state court defendant, personally called Aleksandr Malyutin on March 2, 2007 and menacingly warned him by the end of a 12-minute long telephonic conversation that the state court co-defendant, a multi-million dollar company, would "wipe you out" in retaliation for institution the state court lawsuit Docket #1. (the "March 2, 2007 telephonic conversation".) Apparently shortly thereafter, the state court defendants retained one high-priced attorney representing both of them; that defense counsel filed responsive pleadings and a counterclaim, basically speaking, denying everything, blaming Aleksandr Malyutin for everything that had happened, petitioning the state court for attorney's fees, and demanding dismissal of Aleksandr Malyutin's *pro se* state court complaint unless he posted costs with the state court. (emphasis added.) Aleksandr Malyutin prepared and filed his answer to the state court defendants' counterclaim using such an opportunity to join additional claims against the state court defendants and to fix certain deficiencies of his *pro se* state court complaint.

Aleksandr Malyutin then started discovery pursuant to applicable New Jersey court rules. Aleksandr Malyutin was seeking, *inter alia*, damages way in excess of three hundred thousand US dollars.

22. On March 24, 2007, Aleksandr Malyutin left the US and flew to Russia; he returned to the US on April 7, 2007. When Aleksandr Malyutin arrived at JFK from Russia on April 7, 2007 and being by that time a *pro se* litigant in state judicial proceedings in the United States, he once again exercised a number of rights guaranteed to him by the Constitution, federal and state laws, and International Treaties of the United States, including, but not limited to, the fundamental right of access to court which requires, *inter alia*, having access upon request; Aleksandr Malyutin requested, *inter alia*, that certain agents of the DHS refrain from denying him access to the state court because he needed to further prosecute his then pending state court case and to bring it to trial appearing *pro se*. Aleksandr Malyutin also advised certain agents of the DHS that due to the nature of judicial proceedings he needed permission to stay in the US longer than usual and that he could not know exactly how long it could take to fully complete his state court lawsuit.

23. On April 7, 2007, Aleksandr Malyutin was admitted into the United States; it was his twentieth visit to this country; Aleksandr Malyutin was granted permission to remain in the United States longer than usual in connection with his then ongoing state court lawsuit; his personal information and/or information about the purpose of his visit and/or certain other information was properly and routinely entered into, generally speaking, certain computer system containing certain information that was

accessible to Defendants and that was actually used by Defendants in connection with their actions against Plaintiff, as alleged *infra* herein. Aleksandr Malyutin remained in the United States in connection with the Docket #1 until November 24, 2007.

24. As a result of his very hard and extremely exhausting work on the Docket #1 combined with employment of his personal skills and talent, and despite, as Aleksandr Malyutin understands it now, serious health-related problems triggered by the state court defendants' breach of the contract, Aleksandr Malyutin managed to achieve some remarkable results prosecuting his state court lawsuit that had been filed *pro se*, in Law Division, for the first time in his life, in a foreign country, and in a foreign language. (emphasis added.) For example, in May 2007, during the course of discovery and, in particular, in his answers to Aleksandr Malyutin's requests for admissions, defense counsel formally admitted, *inter alia*, detriment caused by both state court defendants to Aleksandr Malyutin together with a number of other previously disputed material facts. In the end of May 2007, dissatisfied and visibly upset with defense counsel's performance, one of the two state court defendants, a multi-million dollar company, retained an additional defense counsel to defend the state court lawsuit against Aleksandr Malyutin; that additional defense counsel turned out to be one of the most prominent law firms in the Mid-Atlantic region whose clientele included Fortune 500 companies. (emphasis added.) In June-July 2007, Aleksandr Malyutin and such additional defense counsel made certain motions with the state court; Aleksandr Malyutin filed his motion for leave to proceed *in forma pauperis* which was granted by the state court on

July 20, 2007 and which Aleksandr Malyutin had failed to file earlier due to lack of experience back then. The state court appointed a mediator to conduct a free mediation meeting between Aleksandr Malyutin and the state court defendants; the mediator was noticeably impressed by Aleksandr Malyutin's prosecution of his state court lawsuit; during one of his business meetings with Aleksandr Malyutin in Englewood, NJ the mediator nearly fell from his chair when he learnt about the disproportionate defense retained by the state court defendants against indigent *pro se* Aleksandr Malyutin. (emphasis added.) Refusing to accept the fact that Aleksandr Malyutin was appearing *pro se* in Law Division and was making progress prosecuting his state court lawsuit, both defense counsels defiantly refused to prepare their clients' mediation statements and to settle the state court lawsuit with a *pro se* indigent litigant; despite the fact that Aleksandr Malyutin had meritorious claims against the state court defendants, to settle the state court lawsuit with "unrepresented nobody" who on top of that did not have any legal education and had arrived from some far away overseas country where, according to a legend, bears walked the streets of Moscow and people drank Vodka whenever they were thirsty, would apparently make American defense counsels the mockery of their legal colleagues. Between August 2007 and November 2007, Aleksandr Malyutin was preparing to exercise his fundamental right to a fair and objective trial; he was also getting ready to take deposition of the state court defendants upon oral examination and to complete discovery by the court fixed deadline of January 10, 2008.

25. In the beginning of November 2007, Aleksandr Malyutin received via regular mail an Official Legal No-

tice from the state court (the "Legal Notice") advising him, *inter alia*, that the Docket #1 would be scheduled for trial upon completion of pre-trial discovery; shortly thereafter, the state court set the following dates: (a) March 11, 2008 for settlement conference, and (b) March 24, 2008 for trial.

26. The state court defendants represented by the end of 2007 by already three high-priced American attorneys with numerous years of professional experience never actually attempted to dismiss Aleksandr Malyutin's *pro se* state court complaint on summary judgment in light of the fact that, *inter alia*, defense counsel had previously formally admitted detriment caused to Aleksandr Malyutin by both state court defendants. (emphasis added.) Therefore, the Docket #1 almost reached its trial stage.

27. All of Aleksandr Malyutin's claims against the state court defendants were based on facts, law, reality, as well as on material evidence that was kept personally by Aleksandr Malyutin in the United States. Aleksandr Malyutin had what it takes to prove his allegations against the state court defendants and to prevail on the merits of his claims during a fair and objective trial which was evidenced by the fact that, *inter alia*, the state court defendants had retained several high-priced defense counsels, including, as mentioned *supra*, one of the most prominent law firms in the Mid-Atlantic region whose clientele included Fortune 500 companies, to defend against the state court lawsuit brought by *pro se* indigent Aleksandr Malyutin who had no legal education.

28. Aleksandr Malyutin has always had strong ties to his home country which is evidenced by the fact that, *inter alia*, he always returned to Russia after his visits to the United States and other foreign countries. Upon

completion of his state court lawsuit, Aleksandr Malyutin intended to return to his home country.

29. In reasonable anticipation of a soon and fair judgment against the state court defendants which would be a beginning of a difficult process of bringing his entire life back to normal and in anticipation of a soon return to Russia for that matter, Aleksandr Malyutin and his Russian girlfriend, who happened to be in the US back then on her summer work and travel visa, conceived a baby in approximately September-October 2007; defying Defendants' tortured logic and nearly maniacal, paranoid and hysterical obsession which is, however, part of their discretion that, *inter alia*, all Russians are presumed immigrants to the US allegedly dreaming about acquiring American citizenship for themselves and their children, Aleksandr Malyutin's girlfriend left the US and returned to Russia; after having returned from the United States where she had overstayed her summer work and travel program visa, she immediately obtained a B1/B2 entry visa[8] to the United States from the Embassy despite the fact that she was a 23-year old unmarried, pregnant, unemployed student of her last year in college with no assets and with no source of income in Russia, and, therefore, without any binding social, familial, and/or economic ties to Russia; she, however, never used her new B1/B2 entry visa to the United States that was valid for one year and never returned to the US in connection with her pregnancy; she remained in Russia where she later gave birth to a child. (emphasis added.)

---

[8] By, *inter alia*, submitting with the Embassy her nonimmigrant visa application barcode #Y1DQ1D92V0 that was approved.

30. The state court defendants' breach of the contract had very serious and catastrophic consequences for Aleksandr Malyutin. See *supra* at 9-10, ¶ 15. Aleksandr Malyutin was not simply upset, angry, or dissatisfied; he suffered a very serious emotional and mental injury and got exposed to a severe and long-lasting emotional stress that he had never experienced in his life before and that was witnessed by his close friends and family.

31. As a result of the state court defendants' breach of the contract, Aleksandr Malyutin, *inter alia*, incurred debts both in the US and in Russia, debts that he could no longer pay. Debt related problems are usually resolved the civilized way in the US; on the contrary, in Russia inability to pay your debts may often lead to death threats and actual killing by Russian mafia. In case a person is not in Russia, but his family is, Russian mafia may make such death threats directly to family members which was the case with Aleksandr Malyutin. Russian mafia may supposedly reach you no matter where you are, especially in the United States where federal and local governments have been actively pursuing Russian mafia and specifically in the tri-state area of NY-NJ-CT where Aleksandr Malyutin was temporary located. A person needs not to be affiliated with Russian mafia himself; rather, a person's creditor may turn to Russian mafia for help to collect a debt. Upon realizing that the dead-end situation created by the state court defendants' breach of the contract posed real threat to his own life as well as to lives of his family members and that he could not do anything about it, Aleksandr Malyutin experienced a severe emotional stress; Aleksandr Malyutin was exposed to such severe emotional stress for certain period of time. In this connection, certain American lawyers

offered Aleksandr Malyutin to immediately use such situation to seek asylum in the US; Aleksandr Malyutin rejected such opportunity right away in light of the fact that he had always had strong ties to his home country that he never intended to abandon.

32. After the March 2, 2007 telephonic conversation, see *supra* at 12, ¶ 21, and being uncertain as to the exact meaning of the "wipe you out" phrase, Aleksandr Malyutin looked it up in a dictionary and found, *inter alia*, the following meanings: "to destroy completely" and "to murder or kill". Aleksandr Malyutin then immediately felt himself absolutely vulnerable; he realized that he had found himself in a totally hostile and unsafe environment where fear of Russian mafia was intensified by oral threats squarely made to him personally by one of the state court defendants. Therefore, the state court defendants once again caused Aleksandr Malyutin to become stricken with fear of immediate injury and death; Aleksandr Malyutin suffered extreme terror, mental anguish and emotional distress. As a result, and for the second time in a row, Aleksandr Malyutin experienced another severe emotional stress that lasted for certain period of time.

33. Under the then present circumstances, Aleksandr Malyutin's pending state court lawsuit against the state court defendants and reasonable likelihood of collecting his damages became the only guarantee for Aleksandr Malyutin of his own safety and safety of his family, the only hope for his recovery from, as Aleksandr Malyutin understands it now, serious health-related problems triggered by the state court defendants' breach of the contract, and for revival of his business which would allow Aleksandr Malyutin to regain his ability to provide

for himself, his family, and his future children. (emphasis added.) In order to achieve that result, Aleksandr Malyutin rightfully availed himself of the American legal system that was absolutely the best in the world; this fact gave him additional strength, certainty, and confidence. (emphasis added.)

34. In 2007 alone, and in connection with the Docket #1, Aleksandr Malyutin was constrained to spend a total of approximately 300 days in the United States, under the stress of litigation in a foreign country and away from his home, family and relatives, which was an extremely stressful, painful, and terrible ordeal for him.

35. By August-September 2007, all the stress caused to Aleksandr Malyutin by the state court defendants' breach of the contract back in 2006, together with ensuing psychologically traumatic events and stressful litigation in a foreign country, all as described in this complaint, triggered the onset of a mental illness in Aleksandr Malyutin that had no physical cause.

36. Due to his indigent and absolutely destitute status which he had been reduced to by the state court defendants' conduct and actions taken against him, Aleksandr Malyutin could not afford to be medically diagnosed by American doctors or to be treated with medication in order to mitigate his symptoms in connection with his condition. Aleksandr Malyutin, however, spoke via telephone with his friend's mother who was a doctor in Russia and lived there, described to her his symptoms, and sought her advice; she advised Aleksandr Malyutin that his condition looked to her like a mental illness and that he needed to immediately seek professional help that could hardly be provided over a telephone; this prompted Aleksandr Malyutin to conduct his own research in connec-

tion with his condition and to consult with, *inter alia*, the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; Aleksandr Malyutin's condition was best described by the medical term "bipolar disorder". Aleksandr Malyutin's mental illness did impose costs on himself and others impairing, *inter alia*, his ability to function socially and causing others to be distressed; Aleksandr Malyutin, however, never posed a threat to his own property, safety, or welfare or that of others; he also managed to preserve sound mind and judgment. Aleksandr Malyutin's mental illness has never been so severe to prevent him from, *inter alia*, having legal capacity to sue and be sued.

37. In October 2007, Aleksandr Malyutin made certain plans to visit Russia (a) with a purpose to seek professional help in connection with his mental illness that he had developed over a period of one year, (b) as part of his preparation for trial that was to take place in the beginning of 2008, and (c) to renew his entry visa to the United States which had expired in August 2007. Because of his then pending lawsuit, in which he appeared *pro se* and *in forma pauperis*, and coming trial, Aleksandr Malyutin never planned to stay in Russia beyond a reasonable period of time.

38. On November 12, 2007, while Aleksandr Malyutin was driving a car in the Bronx, NY, he was hit by another car that had purposefully rushed out from Aleksandr Malyutin's left side, failed to yield the right of way to Aleksandr Malyutin who was at that moment rightfully occupying an intersection and was almost done crossing it, and was actively accelerating up to the moment it hit the car Aleksandr Malyutin was driving. The impact was in the front driver's side of the car Aleksandr Malyutin

was driving which became no longer drivable as a result of the impact. As of the moment of said collision, Aleksandr Malyutin was in a state of shock and thought that the accident was an attempt on his life either by Russian mafia or the state court defendants who had promised to wipe him out. See *supra* at 16-17, ¶ 31, and at 12, ¶ 21, respectively. Nationality of the driver who caused collision added to such suspicion of Aleksandr Malyutin. Said collision was a psychologically traumatic event for Aleksandr Malyutin causing aggravation of his pre-existing condition; it failed, however, to cause Aleksandr Malyutin any physical injuries and, therefore, he did not report any injuries in a Police Accident Report a copy of which he later personally obtained from the 49th Precinct in the Bronx, NY. (emphasis added.)

39. By November 24, 2007, Aleksandr Malyutin had been compelled to spend at least 3,650 hours of his time, which he had never intended to do, learning from scratch how to, generally speaking, successfully litigate prosecuting his state court lawsuit in Law Division appearing *pro se*, researching and preparing his own motions with the state court and opposing motions of the state court defendants, conducting pre-trial discovery, participating in the state court ordered mediation program, researching and gathering evidence, including with the help of New Jersey state police officers from Wyckoff Police Department as part of his preparation for the coming trial, and otherwise working full-time on his meritorious state court lawsuit that had almost reached its trial stage then.

40. Pursuant to applicable law, Plaintiff intends to rely in the instant matter on the court officers and the United States Marshal's Service, who are not parties to the in-

stant lawsuit or against the US Department of State (the "DOS") or the United States of America, to effect proper service of process in the instant matter; in this connection, Plaintiff hereby takes reasonable steps to identify[9] for the court each and all Defendants named in this complaint.

B. Defendants

41. At all times relevant to this complaint, Defendant Condoleezza Rice ("Defendant Rice"):

a) was the Secretary of the DOS;
b) was the US citizen employee of the DOS;
c) was a superior to each and all other Defendants in the instant matter, i.e. she was a person superior to each and all other Defendants in rank and status by reason of a higher position;
d) was charged with the administration and enforcement of laws relating to the powers, duties,

---

[9] In *Romandette v. Weetabix Co.*, 807 F.2d 309 (2d Cir.1986), the court addressed, *inter alia*, the issue of personal service by *pro se in forma pauperis* plaintiff and found that plaintiff's circumstances amounted to "special circumstances of the litigant's position." In *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir.1996), the court held, *inter alia*, that plaintiff proceeding *in forma pauperis* is relieved of the burden to serve process "...once reasonable steps have been taken to identify for the court the defendants named in the complaint. See *Graham v. Satkoski*, 51 F.3d 710, 712 (7th Cir.1995) ("The Marshals Service is required to serve process on behalf of individuals proceeding *in forma pauperis*."); see also *Mallard v. United States Dist. Court for the Southern Dist. of Iowa*, 490 U.S. 296, 302, 109 S.Ct. 1814, 1818-19, 104 L.Ed.2d 318 (1989) ("Congress evidently knew how to require service when it deemed compulsory service appropriate.")."

and functions of diplomatic and consular officers of the United States;

e) had responsibilities with respect to immigration;

f) supervised the administration of the US Immigration laws abroad;

g) had ultimate authority over operations of the DOS;

h) was authorized, including through her agents, to deem aliens inadmissible to the United States;

i) was acting under color of federal authority;

j) had substantive and coordinating responsibility over issues of immunities of the US representatives abroad;

k) did not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien but could direct a consular officer to refuse a visa to an alien if the she deemed such refusal necessary or advisable.

42. Defendant Rice is sued in her individual capacity.

43. At certain times relevant to this complaint, Defendant William Burns ("Defendant Burns"):

a) was the US Ambassador to Russia;

b) was the chief of the Embassy;

c) was the DOS employee;

d) was the member of the US Foreign Service;

e) was a superior to each and all other Defendants in the instant matter, except for Defendant Rice, i.e. Defendant Burns was a person superior to each and all other Defendants, except for Defendant Rice, in rank and status by reason of a higher position;

f) was in charge of the entire Embassy and supervised all of its activities;

g) had authority over the DOS personnel in Russia;
h) had full responsibility for the direction, coordination, and supervision of all US Government executive branch employees in Russia;
i) was fully and currently informed with respect to all activities and operations of the US Government executive branch employees in Russia;
j) ensured that all US Government executive branch employees in Russia complied fully with all his applicable directives;
k) was acting under color of federal authority.

44. Defendant Burns is sued in his individual capacity.

45. At certain times relevant to this complaint, Defendant Daniel Russell ("Defendant Russell"):

a) was Deputy Chief of Mission at, and/or Charge d'Affaires ad interim of, the Embassy;
b) served as *alter ego* to the Chief of Mission, i.e. to Defendant Burns;
c) was the second in command at the Embassy after Defendant Burns;
d) was the second-ranking official of the US Government in Russia;
e) served as the "Chief Operating Officer" of the Embassy;
f) was the DOS employee;
g) was the member of the US Foreign Service;
h) was a superior to each and all other Defendants in the instant matter, except for Defendant Rice and Defendant Burns, i.e. Defendant Russell was a person superior to each and all other Defendants, except for Defendant Rice and Defendant Burns, in rank and status by reason of a higher position;

i) was responsible for the management of the Embassy's day-to-day activities;

j) substituted for Defendant Burns, and spoke for him, in all matters as Defendant Burns' deputy;

k) was responsible, together with Defendant Burns, for and headed the Embassy's "country team" of the US Government personnel;

l) acted as Charge d'Affaires ad interim when Defendant Burns was away;

m) was acting under color of federal authority.

46. Defendant Russell is sued in his individual capacity.

47. At all times relevant to this complaint, Defendant Kurt Amend ("Defendant Amend"):

a) was the US Consul General at the Embassy;

b) was the DOS employee;

c) was the member of the US Foreign Service;

d) was a superior to each and all other Defendants in the instant matter, except for Defendant Rice and Defendant Burns and Defendant Russell, i.e. Defendant Amend was a person superior to each and all other Defendants, except for Defendant Rice and Defendant Burns and Defendant Russell, in rank and status by reason of a higher position;

e) had oversight responsibilities over all consular activities of the Embassy and over Defendant #5 and Defendant #6;

f) had authority to review visa applications and visa denials and adjudicate visa applications;

g) was acting under color of federal authority.

48. Defendant Amend is sued in his individual capacity.

49. At certain times relevant to this complaint, Defendant unknown named white female ("Defendant #5):

a) was the US Consular officer at the Embassy;

b) was the DOS employee;
c) was the member of the US Foreign Service;
d) was authorized to adjudicate visa applications and to grant or deny entry visas to the United States to aliens;
e) personally conducted Plaintiff's appointment at the Embassy;
f) personally spoke to Plaintiff face-to-face at the Embassy;
g) was acting under color of federal authority.

50. Defendant #5 is sued in her individual capacity.

51. At certain times relevant to this complaint, Defendant unknown named white male ("Defendant #6"):

a) was the US Consular officer at the Embassy;
b) was the DOS employee;
c) was the member of the US Foreign Service;
d) was authorized to adjudicate visa applications and to grant or deny entry visas to the United States to aliens;
e) personally conducted Plaintiff's appointment at the Embassy;
f) personally spoke to Plaintiff face-to-face at the Embassy;
g) was acting under color of federal authority.

52. Defendant #6 is sued in his individual capacity.

53. Plaintiff sues each and all Defendants in their individual capacities.

54. In order to effect proper service of process in the instant matter pursuant to applicable law, the court officers and the United States Marshal's Service, who are not parties to the instant lawsuit or against the DOS or the United States of America, may rely upon the law pursuant to which the Executive Office of the Office of

the Legal Adviser ("L/EX") at the United States Department of State located at 2201 C Street, NW, Room 5519, Washington, DC 20520-6310 is authorized to receive and accept summonses and complaints sought to be served upon Defendant Rice, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #5, and Defendant #6 in connection with the instant matter which arises out of, *inter alia*, the performance of certain functions by Defendant Rice, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #5, and Defendant #6 acting under color of federal authority.

55. The following are not parties in the instant matter:

a) the United States Government;
b) the United States Department of State;
c) the United States of America;
d) the above-named Defendants in their official capacities.

IV. STATUTE OF LIMITATIONS

56. Plaintiff's claims against Defendants are not time-barred and, therefore, such claims are actionable.

A. *Bivens* actions

57. The applicable statute of limitations in *Bivens* actions is the state personal injury statute. *Van Strum v. Lawn*, 940 F.2d 406, 410 (9th Cir.1991). *Bivens* actions are governed by the personal injury statute of limitations for the state in which the district sits. *Matthews v. Macanas*, 990 F.2d 467, 468 (9th Cir.1993). The court in *Hobson v. Wilson*, 737 F.2d 1, 32 n. 99 (D.C.Cir.1984), cert. denied, 470 US 1084 (1985) held that the District of

Columbia's statute of limitations for *Bivens* actions is three years.

B. 42 USC 1985 claims

58. The Court in *Callwood v. Questel*, 883 F.2d 272 (3d Cir.1989) stated, *inter alia*, that "the Supreme Court has yet to make a definitive statement concerning the most analogous state limitations period for 42 USC Sec. 1985 claims concerning conspiracies to deny constitutional rights. We, however, spoke implicitly on the issue when, in *Pratt v. Thornburgh*, 807 F.2d 355 (3d Cir.1986), cert. denied, 484 US 839, 108 S.Ct. 125, 98 L.Ed.2d 83 (1987), we affirmed a district court decision holding that, after *Goodman v. Lukens Steel*, 482 US 656, 107 S.Ct. 2617, Sec. 1985 actions should also be controlled by the forum state's limitations period for personal injury claims. *Pratt v. Thornburgh*, 807 F.2d at 357." See also *Pratt v. Thornburgh*, 807 F.2d 355 (3d Cir.1986), cert. denied, 484 US 839, 108 S.Ct. 125, 98 L.Ed.2d 83 (1987) (personal injury statute of limitations governs Sec. 1985 claims). The applicable statute of limitations for actions brought pursuant to 42 USC Sec. 1985 is the District of Columbia three-year statute of limitations governing personal injury actions. DC ST § 12-301.

C. 42 USC 1986 claims

59. The statute of limitations for actions brought pursuant to Sec. 1986 is one year. 42 USC 1986.

V. STATEMENT OF FACTS

60. Plaintiff hereby incorporates by reference paragraphs 1 through 59, inclusively, as if set forth in full herein.

61. On November 24, 2007, Plaintiff arrived at JFK to depart the United States for a short-term trip to Russia. Because the state court lawsuit was everything to him, see *supra* at 17-18, ¶ 33, and to be on the safe side, Plaintiff decided to seek advice from one of agents of the DHS on duty at JFK to make sure he would be able to return to the United States in connection with the Docket #1. (emphasis added.) Plaintiff then approached an unknown named white male agent of the DHS who was on duty at JFK and talked to him in presence of a witness for at least ten minutes. Plaintiff described his situation in connection with the Docket #1 providing certain details about his quest for justice in the United States, for example, about his court recognized indigent status, the seriousness of situation in which he had been put by the state court defendants, etc., and asked the agent of the DHS whether Plaintiff should expect problems getting a new B1/B2 entry visa to the United States at the Embassy and returning to the United States in connection with the Docket #1. The agent of the DHS responded that he would be able to assist Plaintiff for that matter only after examining Plaintiff's passport. Plaintiff then produced his passport to the agent of the DHS who, after having examined it, including the history of Plaintiff's previous visits to the US contained therein, advised Plaintiff, *inter alia*, that under the then present circumstances Aleksandr Malyutin was not violating any Immigration laws of the United States and that he would not have prob-

lems getting a new B1/B2 entry visa to the United States at the Embassy and returning to the United States in light of Plaintiff's extreme emergency situation beyond his control in connection with the state court litigation in the United States. Relying on such assurances of the agent of the DHS, Plaintiff left the United States.

62. Upon arrival to Russia and prior to November 27, 2007, Plaintiff sought medical help in connection with his condition and was repeatedly advised that his condition was a serious mental illness which required long-term treatment and expensive medication.

63. On November 27, 2007, Plaintiff exercised a number of rights guaranteed to him by the Constitution, federal and state laws, and International Treaties of the United States, including but not limited to the fundamental right of access to court which requires, *inter alia*, having access upon request, and made his request in writing with Defendants requesting access to the state court; in his request, Plaintiff properly advised Defendants that, *inter alia*, he needed to get back to the United States as soon as possible in connection with the Docket #1 where he was seeking justice as a *pro se* litigant (the "November 27, 2007 request for access to court"); Plaintiff properly served the November 27, 2007 request for access to court upon Defendants following procedures set by Defendants for that matter.

64. On November 27, 2007, Plaintiff also submitted his formal visa application barcode #M1DQ124DCJ to Defendants, following procedures set by Defendants for that matter, advising Defendants in writing that, *inter alia*, his mental disorder was not dangerous and that he was a *pro se* litigant in state judicial proceedings in the US.

65. On November 27, 2007, Defendants scheduled Plaintiff's appointment at the Embassy for December 11, 2007 advising Plaintiff that they were unable to reschedule his appointment for an earlier date except in extreme emergency situation. (emphasis added.)

66. In connection with the November 27, 2007 request for access to court, Defendants had access to, generally speaking, certain computer system that contained, *inter alia*, certain personal information about Plaintiff as well as information about his previous visits to the United States properly entered there, for example, as described *supra* at 11, ¶ 19, and at 13, ¶ 23; Defendants used and/or considered, on an expedited basis, certain information about Plaintiff that was available to them from various sources, found that Plaintiff had an extreme emergency situation, reached certain agreement, and conspired, among themselves[10] in connection with Plaintiff's state judicial proceedings and the November 27, 2007 request for access to court, and called Plaintiff on the phone, on or around November 28, 2007, orally advising him that his appointment at the Embassy had been rescheduled for November 29, 2007 instead.

67. On November 29, 2007, Plaintiff arrived at the Embassy. Plaintiff's appointment at the Embassy was conducted personally by Defendant #5. Plaintiff talked to personally and face-to-face with Defendant #5 in connection with (a) the November 27, 2007 request for access to court, see *supra* at 28, ¶ 63, and (b) his November

---

[10] By means of face-to-face and/or telephonic conversations and/or otherwise, and/or by exchanging certain documents electronically and/or otherwise.

27, 2007 formal visa application barcode #M1DQ124DCJ, see *supra* at 28, ¶ 64.

68. Defendant #5 started Plaintiff's appointment at the Embassy by inquiring Plaintiff about his state judicial proceedings in the United States. In particular, and in connection with Plaintiff's November 27, 2007 request for access to court that was sitting in front of her on her desk, Defendant #5[11] insisted, as if she were a party to the state court lawsuit and/or a state court judge and/or Plaintiff's attorney, that Plaintiff comment on his then pending litigation providing details on what exactly he had been doing in the United States during the course of discovery as well as what exactly Plaintiff still planned to do in the months to come and exactly how much more additional time Plaintiff needed to complete his state court litigation in the United States. Plaintiff then, *inter alia*:

a) advised Defendant #5 that litigating *pro se* since January 2007, he was seeking justice in the state court and damages way in excess of $300,000 exercising rights guaranteed to him by NJSA 2A:15-

[11] Just like any other similarly situated reasonable person, Defendants knew that lengthy judicial proceedings, in which Plaintiff was then involved, could not be stopped and/or defeated simply by one of the Defendants' one-time denial of an entry visa to the US to Plaintiff; instead, in order to eventually achieve the goal of defeating the due course of justice in Plaintiffs' state judicial proceedings, it would require Defendants to conspire and to come to the meeting of the minds and to employ certain pattern of conduct – it would require a proactive and systematic interference with, and obstruction of, justice. Defendants also knew that by virtue of their official position they could claim immunity from a lawsuit which gave them additional strength, certainty, and confidence in connection with their actions against Plaintiff's state court suit.

1 which provided, in pertinent part, that "every person of full age and sound mind may prosecute... any action in any court, in person...", the due process clauses of the Fifth and Fourteenth Amendments, and the equal protection clause of the Fourteenth Amendment to the US Constitution, as well as by certain International Treaties binding on the United States;

b) Plaintiff produced to Defendant #5 for inspection certain documents that she thoroughly read and/or examined, including but not limited to, a copy of discovery end date search results for the Docket #1;

c) advised Defendant #5 that litigating and prosecuting his lawsuit *pro se* and in his person in the US was the only option available to him to secure, guarantee, and exercise his fundamental rights protected by the US Constitution, including his right of access to court and right to a fair and objective trial;

d) advised Defendant #5 that he was a self-employed person without means to retain a counsel and that he employed himself full-time as a legal counsel in connection with the formal judicial proceedings in the US without any compensation for legal services he was providing to himself;

e) advised Defendant #5 that the state court defendants' actions taken against him had reduced him to poverty resulting in, *inter alia*, (a) the need to turn to his friends and family for financial support that had never been a source of free money and had to be eventually repaid, (b) his application with the state court for leave to proceed *in forma*

pauperis granted by the state court, and (c) his inability to afford to retain a professional counsel;

f) advised Defendant #5 that his material evidence in connection with the Docket #1 and certain property kept in the United States would be lost, damaged, or destroyed if he would not return to the United States within a reasonable period of time and that he had no other opportunity to perform a duty to preserve his material evidence and to preserve his property in the United States, but to personally return to the US within a reasonable period of time;

g) advised Defendant #5 that he still had not been deposed by his adversaries and that he still planned to depose his adversaries anytime before the court set discovery end date of January 10, 2008 that was fast approaching;

h) advised Defendant #5 that, due to the nature of formal judicial proceedings, it was not his function to, and, therefore, he could not predict exactly how much more additional time would be needed to complete such proceedings;

i) advised Defendant #5 that if he were to remain in Russia beyond a reasonable period of time, he would, under the then present circumstances, lose his otherwise meritorious state court lawsuit to his adversaries, who had admitted detriment caused to him, and his ability to recover exorbitant economic and non-economic damages caused to him by the state court defendants;

j) advised Defendant #5 that he had certain mental illness and that such mental disorder was not dangerous and that he was a person of sound mind

and judgment who had never posed threat to his own property, safety, or welfare or that of others; and

k) advised Defendant #5 that his state court lawsuit had almost reached its trial stage and produced to Defendant #5 for inspection certain documents that she thoroughly read and/or examined, including but not limited to, an original of the Legal Notice, see *supra* at 14-15, ¶ 25.

69. Defendant #5 then asked Plaintiff to stop talking and wait certain period of time because, as she advised Plaintiff, she needed to confer with somebody. Obviously, Defendant #5 did not expect that Plaintiff would raise so many important issues and, therefore, she was not prepared to vest all the responsibility for performance of certain functions for that matter with herself; Defendant #5 was obviously in need of some further authorization for taking further actions against Plaintiff in connection with his November 27, 2007 request for access to court and his state judicial proceedings. Although Defendant #5 never advised Plaintiff as to whom exactly she went to confer with, Plaintiff believes that under the circumstances and taking into account the seriousness of issues raised by Plaintiff, it can be constructively inferred, and any other similarly situated reasonable person would have come to the same conclusion, that she went to confer with[12] her superiors – Defendant Rice and/or Defend-

[12] In person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise, with a purpose to discuss the situation with other Defendants, not to simply inform other Defendants about the situation, and in order to reach an agreement and make certain joint decision(s).

ant Burns and/or Defendant Russell and/or Defendant Amend.

70. When, after certain period of time, Defendant #5 returned, upon having conferred, and having reached certain agreement, with somebody, presumably with her superiors, Defendant Rice and/or Defendant Burns and/or Defendant Russell and/or Defendant Amend, she was wearing, figuratively speaking, the mantle of a state court judge that made her look ugly because it was clearly not her function. (emphasis added.) Visibly resolved this time and harboring invidiously discriminatory animus towards mentally ill Plaintiff[13], Defendant #5, acting under color of federal authority and speaking on behalf of, presumably, other Defendants, then started, *inter alia*, to perform certain functions of a state court judge in connection with Plaintiff's November 27, 2007 request for access to court and Plaintiff's state judicial proceedings, and, among other things, advised Plaintiff that, from, presumably, Defendants' standpoint:

a) he may not further prosecute his state court lawsuit in the United States in his person and appearing *pro se*;
b) from that moment on, he had to retain a professional counsel to further prosecute his state court lawsuit in the United States;
c) he and the state court had made a big mistake, respectively, by filing an application to proceed *in forma pauperis* and by granting such application,

---

[13] "In addition, of course, persons with mental disabilities have been subject to historic mistreatment, indifference, and hostility." *Olmstead v. L.C.*, 527 US 581, 608 (1999) (Justice Kennedy, concurring in the judgment).

because thereby Plaintiff and the state court made American taxpayers "pay for your motions";

d) Plaintiff had been simply sitting on his "friend's couch in the Bronx" doing nothing during all the time that Plaintiff had spent in the United States in connection with his state court lawsuit there, which had nothing to do with reality and which was extremely humiliating and highly disturbing for Plaintiff to hear because, *inter alia*, it questioned Plaintiff's mental capacity to proceed *pro se*;

e) in order to further proceed with his quest for justice in the United States, Plaintiff's financial situation must be better; in particular, Defendant #5 asked Plaintiff in a humiliating tone: "So you cannot afford to pay thirty something dollars for your motions?!" In this connection, Plaintiff submits to the court that to him it equated to: "You want justice, yet you do not have thirty something dollars to buy it?!" (emphasis added);

f) he would have to be deposed in Russia and that he, in his turn, would have to think of some way to depose the state court defendants either in, or from Russia, as if there were no such authority as the US Department of State's "Holy Book", the Foreign Affairs Manual ("FAM") which said, in pertinent parts, that "Consular officers should be ... familiar with the provisions of local law regarding depositions" and that "**Depositions Not Permitted**" in the "Russian Federation". 7 FAM 921. (emphasis added; bold type as in 7 FAM 921);

g) he may not participate in the coming trial in the United States in his person and appearing *pro se*

and that he would have to retain a professional counsel for that matter; and

h) in connection with one of Plaintiff's concerns [see *supra* at 31, ¶ 68(f)], he may not perform his duty to preserve his material evidence or property he had in the United States by going there personally.

71. Defendant #5 then, figuratively speaking, dropped the mantle of a state court judge; in connection with Plaintiff's November 27, 2007 formal visa application barcode #M1DQ124DCJ and continuing to act under color of federal authority and without conferring with anybody or asking anybody's advice because it was her day-to-day activity, she quickly and without any hesitation performed a discretionary act within the scope of her authority and official responsibilities by advising Plaintiff that she would not grant him a new entry visa to the US because for purposes of INA 214(b), codified at 8 USC 1184(b), she personally presumed Plaintiff to be an immigrant whose social, familial, and/or economic ties to Russia were not strong enough.

72. Plaintiff then advised Defendant #5, and asked her to advise Defendants accordingly, that unless Defendants immediately rectify the situation created by their conspiratorial actions taken against him in connection with Defendants' adjudication of Plaintiff's November 27, 2007 request for access to court [see *supra* at 28, ¶ 63], he would immediately prepare and file a lawsuit against Defendants seeking appropriate relief because such Defendants' actions interfered with, and obstructed, the due course of justice in state judicial proceedings, posed real threat to Plaintiff's safety, welfare, and property, violated his clearly established constitutional rights in connec-

tion with, *inter alia*, state judicial proceedings, and were motivated by intent to deprive Plaintiff of the equal protection of the laws and the equal privileges under the laws, to which he was entitled, on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey (the "November 29, 2007 legal warning"). (emphasis added.)

73. Defendant #5 then silently gave Plaintiff back his passport together with certain other documents and left.

74. Plaintiff then left the Embassy devastated, helpless, and disgusted at such Defendants' outrageous and egregious conduct in connection with his November 27, 2007 request for access to court and his state judicial proceedings.

75. On or around November 29, 2007, and/or thereafter, after Defendant #5 spoke to Plaintiff face-to-face and personally [as described *supra*], she conferred with[14] other Defendants advising them about, *inter alia*, the results of Plaintiff's November 29, 2007 appointment at the Embassy and Plaintiff's November 29, 2007 legal warning for that matter [see *supra* at 34-35, ¶ 72]; upon having conferred with each other by certain means, Defendants agreed among themselves upon certain pattern of conduct against Plaintiff in connection with his state judicial proceedings and in connection with a possible

---

[14] In person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise, with a purpose to discuss the situation with other Defendants, not to simply inform other Defendants about the situation, and in order to reach an agreement and make certain joint decision(s) about Defendants' further actions against Plaintiff.

lawsuit by Plaintiff against Defendants. In particular, and in light of the fact that Defendant Rice had substantive and coordinating responsibility over issues of immunities of the US representatives abroad, and because Plaintiff was raising such issues, and also because Plaintiff's November 29, 2007 legal warning could result in a personal capacity lawsuit against each and all Defendants, Defendant Rice provided[15] to other Defendants certain instructions and/or directives on what to do and how to do it in connection with Defendants' actions against Plaintiff and his state judicial proceedings.

76. As a result of conspiratorial actions taken by Defendants against him in connection with the November 27, 2007 request for access to court and his state judicial proceedings, Plaintiff, among other things, could no longer prosecute his state court lawsuit, and/or bring it to trial, in the United States in his person appearing *pro se*.

77. As a result of conspiratorial actions taken by Defendants against him in connection with the November 27, 2007 request for access to court and his state judicial proceedings, Plaintiff was denied the constitutionally protected right of access to court which did not require constant access to court, rather than simply having access upon request.

78. Starting from November 29, 2007, Plaintiff was compelled to oppose numerous motions to dismiss instead and to file his own otherwise needless motions with the state court. Plaintiff suffered anxiety, rage, extreme

---

[15] In person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversation(s), and/or by exchanging certain documents electronically and/or otherwise.

terror, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, mental suffering, and humiliation resulting in aggravation of his pre-existing condition. Plaintiff dreaded to think that, as a result of conspiratorial actions taken by Defendants against him in connection with his state judicial proceedings, he could lose everything he had achieved prosecuting his state court lawsuit. (emphasis added.) It would mean that all of his efforts and sufferings were in vain; Plaintiff repeatedly experienced severe emotional stress that lasted for certain period of time and that caused aggravation of his pre-existing condition.

79. As a result of conspiratorial actions taken by Defendants against him in connection with the November 27, 2007 request for access to court and his state judicial proceedings, Plaintiff got an extremely distressful, painful, and terrifying feeling, which was intensified by the fact that Defendants were acting under color of federal authority, that, *inter alia*:

a) justice in the United States was for sale;
b) eligibility to seek justice in courts in the United States directly depended on person's ability to retain a professional counsel;
c) one could not reasonably expect to be eligible to seek justice in courts in the United States if one could not afford to pay "thirty something dollars" to make a motion; and
d) any mentally ill person, even if such person was a litigant in formal judicial proceedings, could be denied enjoyment of fundamental civil rights and access to court and to justice in the United States because of such person's mental illness and in violation of, *inter alia*, NJSA 30:4-24.1 which provid-

ed, in pertinent part, that "every individual who is mentally ill shall be entitled to fundamental civil rights..." NJSA 30:4-24.1.

80. On December 4, 2007 and following the November 29, 2007 legal warning, Plaintiff forwarded his written legal warning letter clearly designated "Re: Legal Warning" (the "December 4, 2007 legal warning") to:

a) Defendant Rice via FedEx (FedEx Tracking No. 861505744659; delivered on December 6, 2007 to the Central Mail Room B-528 at the DOS in Washington, DC where it was accepted and signed for by Harold Harrison, an employee of the Diplomatic Pouch and Mail Division that provided mail services to the DOS, surveyed the flow of mail in the system, managed mail processing system, which segregated mail by type and sorted and delivered it to its final destination); and

b) other Defendants via registered mail, return receipt requested (Russian Post Tracking No. 45822; delivered on December 11, 2007 to, and accepted by, a certain representative of the Embassy).

81. The November 29, 2007 and December 4, 2007 legal warnings were proper notices to each and all Defendants that Plaintiff, *inter alia*, would institute a lawsuit against them unless they took immediate action to fully and completely resolve the situation created by Defendants' conspiratorial actions taken against Plaintiff; in his December 4, 2007 legal warning, Plaintiff set a deadline of December 22, 2007 for Defendants to resolve such situation. Plaintiff advised Defendants, *inter alia*, that if they sought to prevent him from taking further steps to protect himself then Defendants needed to contact Plaintiff

as soon as possible, whether by mail, email or telephone and to explain that situation. Plaintiff further advised Defendants that their actions may be found in contempt of court.

82. In his December 4, 2007 legal warning, Plaintiff, among other things, repeatedly requested, and Defendants repeatedly denied to him access to the state court in connection with the Docket #1.

83. Upon being properly served with both the November 29, 2007 and December 4, 2007 legal warnings, Defendants reached certain agreement among themselves[16] with a purpose to further, by certain means, their conspiracy against Plaintiff in connection with the November 27, 2007 request for access to court and his state judicial proceedings. None of Defendants ever withdrew from her/his conspiracy against Plaintiff by taking affirmative steps to terminate or abandon her/his personal participation in it.

84. The November 29, 2007 and December 4, 2007 legal warnings were sufficient and reasonable notices to each and all Defendants of the imminent personal or official capacity litigation against them either in foreign or US courts. In this connection:

a) 7 FAM 971.1(c) unequivocally instructed the Embassy and, therefore, at least Defendant Burns, Defendant Russell, Defendant Amend, and Defendant #5 to "notify the Department (L/DL), by

[16] By certain means, in person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise.

telegram at once of the potential litigation" (7 FAM 971.1(c));

b) 2 FAM 284.3(a) unequivocally instructed the Embassy and, therefore, at least Defendant Burns, Defendant Russell, Defendant Amend, and Defendant #5 that "the Department... should be promptly informed of... imminent litigation against the United States with such details as to... nature of suit as may be available, and such recommendations as the post may wish to have considered in respect of its particular local situation. Information regarding the nature of the suit should include a detailed report on both the facts of the case and the issues that.... are expected to be raised in the litigation by any party to the case. The post should initially report... imminent litigation by telegram... The post's telegraphic report should be followed by a more detailed report... Copies of all pertinent documents should be forwarded to the Department with the post's airgram" (2 FAM 284.3(a));

c) 2 FAM 226(a) unequivocally instructed the Embassy and, therefore, at least Defendant Burns, Defendant Russell, Defendant Amend, and Defendant #5 that "each post shall inform the Department of any litigation in a local court in which a US citizen employee may become involved in employee's private capacity. The post's report should be in the form prescribed in 2 FAM 280 for reporting suits against the United States..." (2 FAM 226(a)); and

d) 2 FAM 226(b) unequivocally instructed, at least, Defendant Burns, Defendant Russell, and De-

fendant Amend that they were "responsible for reporting to their posts of assignment litigation in foreign courts in which they may become involved." (2 FAM 226(b).)

85. In light of the foregoing[17], in November 2007 – January 2008, Defendant Rice was at least constructively notified by other Defendants, including but not limited to, via certain official channels, about the imminent litigation[18] against Defendants by Plaintiff and was provided for that matter with certain detailed reports on facts and issues that were expected to be raised in such litigation, as unequivocally prescribed by, *inter alia*, pertinent parts of 7 FAM 971.1(c), 2 FAM 284.3(a), 2 FAM 226(a), and 2 FAM 226(b). Upon reaching certain agreement among themselves[19] in November 2007 – January 2008, Defendants decided, among other things, to ignore Plaintiff's legal warnings altogether and to further their conspiracy against Plaintiff in connection with his state judicial proceedings.

86. In particular, in November 2007 – January 2008:

a) Defendants had certain knowledge that Defendant #5 had been engaged in conduct that posed an unreasonable risk of constitutional injury to Plaintiff, yet they chose to facilitate and/or approve and/or condone such conduct and to act with a

---

[17] And in addition to Plaintiff's November 29, 2007 and December 4, 2007 legal warnings.

[18] Litigation where Defendant Rice could become involved as a defendant in her private capacity.

[19] By certain means, in person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise.

conscious disregard for the risk of constitutional injury to Plaintiff;

b) Defendants provided, by certain means, certain instructions and/or directives to Defendant #5 and certain other US consular officers at the Embassy as to what actions, including further actions, and how such actions, including further actions, must be taken, and what pattern of conduct must be followed, against Plaintiff in connection with his state judicial proceedings in order to defeat the due course of justice therein;

c) Defendants ensured by using certain means that Defendant #5 and certain other US consular officers at the Embassy complied fully with all such instructions and/or directives; none of Defendants ever withdrew from her/his conspiracy against Plaintiff by taking affirmative steps to terminate or abandon her/his personal participation in it; and

d) Defendants, by using certain means, assured Defendant #5 and certain other US consular officers at the Embassy and each other that Plaintiff was, and would continue to be, precluded by law and defense of immunity from seeking redress for Defendants' conspiratorial actions against Plaintiff in connection with his state court lawsuit, such that Defendants could rest assured in this connection.

87. Plaintiff then notified the state court defendants that he had been denied access to court. The state court defendants immediately decided to use federal Defendants' interference with the due course of justice in state judicial proceedings, and federal Defendants' conspiracy against Plaintiff for that matter, to their advantage in

light of Plaintiff's inability to appear in person in Hackensack, NJ for his deposition upon oral examination, to further prosecute his case and bring it to trial in the United States appearing *pro se*; in the very end of December 2007, the state court defendants urgently filed their joint motion, returnable on January 18, 2008, to dismiss Plaintiff's state court *pro se* complaint against them.

88. Because of Defendants' conspiracy against him in connection with his state judicial proceedings, Plaintiff was constrained to incur, to his detriment, additional and otherwise needless expenses to oppose the state court defendants' motions to dismiss that were based solely upon Plaintiff's inability to appear in person in Hackensack, NJ for his deposition upon oral examination, and to make his own otherwise needless motions with the state court, including but not limited to his motion for a protective order, by spending his time to research and properly prepare motion papers for the state court and by mailing his letter briefs and certifications from Moscow, Russia to the United States via FedEx in light of extreme time sensitivity of certain matters. (emphasis added.)

89. On January 18, 2008, Hon. Menelaos W. Toskos, J.S.C. heard a motion to dismiss filed jointly by the state court defendants and opposed by Plaintiff and denied it in its entirety; in his January 18, 2008 order (the "January 18, 2008 order") and in light of, *inter alia*, extraordinary circumstances created by federal Defendants, Hon. Menelaos W. Toskos, J.S.C. extended pre-trial discovery by ninety days from January 10, 2008 to April 9, 2008 and compelled Plaintiff to appear in person in the United States in Hackensack, NJ for his deposition upon oral

examination anytime before February 29, 2008 at the law offices of one of the most prominent law firms in the Mid-Atlantic region.

90. On January 24, 2008 and in connection with the January 18, 2008 order, Plaintiff repeatedly exercised a number of rights guaranteed to him by the Constitution, federal and state laws, and International Treaties of the United States, including but not limited to the fundamental right of access to court which requires, *inter alia*, having access upon request and which had been repeatedly denied to Plaintiff by Defendants, and repeatedly made his request in writing with Defendants requesting access to the state court; in his request, Plaintiff properly advised Defendants that he urgently needed, *inter alia*, to get back to the United States as soon as possible in connection with the Docket #1 where he was seeking justice as a *pro se* litigant, and to perform his duties under the January 18, 2008 order a copy of which was attached thereto (the "January 24, 2008 request for access to court"); Plaintiff properly served the January 24, 2008 request for access to court upon Defendants following procedures set by Defendants for that matter.

91. On January 24, 2008, Plaintiff also submitted his formal visa application barcode #E1FD1MSWW8 to Defendants, following procedures set by Defendants for that matter, advising Defendants in writing that, *inter alia*, his mental disorder was not dangerous and that he was a *pro se* litigant in state judicial proceedings in the US.

92. On January 24, 2008, Defendants scheduled Plaintiff's appointment at the Embassy for February 5, 2008 advising Plaintiff that they were unable to reschedule his

appointment for an earlier date except in extreme emergency situation.

93. On or around January 24, 2008, and in connection with the January 24, 2008 request for access to court, Defendants had access to, generally speaking, certain computer system that contained, *inter alia*, certain personal information about Plaintiff as well as information about his previous visits to the United States and visa denial; Defendants used and/or considered, on an expedited basis, certain information about Plaintiff that was available to them from various sources, repeatedly reached certain agreement, and conspired, among themselves[20] against Plaintiff and his state judicial proceedings, and refused to reschedule Plaintiff's appointment at the Embassy for an earlier date despite Plaintiff's written request for that matter in connection with the urgent need to perform his duties under the January 18, 2008 order.

94. In particular, in January-February 2008:

a) Defendants provided, by certain means, certain instructions and/or directives to Defendant #5 and certain other US consular officers at the Embassy, including Defendant #6, as to what actions, including further actions, and how such actions, including further actions, must be taken, and what pattern of conduct must be followed, against Plaintiff in connection with his state judicial proceedings in order to defeat the due course of justice therein;

---

[20] By certain means, including but not limited to, by means of face-to-face and/or telephonic conversations and/or otherwise, and/or by exchanging certain documents electronically and/or otherwise.

b) Defendants ensured by using certain means that Defendant #5 and certain other US consular officers at the Embassy, including Defendant #6, complied fully with all such instructions and/or directives; none of Defendants ever withdrew from her/his conspiracy against Plaintiff by taking affirmative steps to terminate or abandon her/his personal participation in it; and

c) Defendants, by using certain means, assured Defendant #5 and certain other US consular officers at the Embassy, including Defendant #6, and each other that Plaintiff was, and would continue to be, precluded by law and defense of immunity from seeking redress for Defendants' conspiratorial actions against Plaintiff in connection with his state court lawsuit, such that Defendants could rest assured in this connection and continue to pursue their pattern of conduct aimed at defeating the due course of justice in Plaintiff's state judicial proceedings by, *inter alia*, obstructing this time the January 18, 2008 order.

95. On February 5, 2008, Plaintiff arrived at the Embassy. Plaintiff saw Defendant #5 and Defendant #6 sitting next to each other. Being aware of the fact that Defendant #5 was a member of Defendants' conspiracy against him, Plaintiff was afraid to talk to her once again. Plaintiff then talked to personally, and face-to-face with, Defendant #6 in connection with (a) the January 24, 2008 request for access to court, and (b) his January 24, 2008 formal visa application barcode #E1FD1MSWW8.

96. Defendant #6 started Plaintiff's appointment at the Embassy by inquiring Plaintiff about his state judicial proceedings in the United States. In particular, and

in connection with the January 24, 2008 request for access to court that was sitting in front of him on his desk, Defendant #6 insisted, as if he were a party to the state court lawsuit and/or a state court judge and/or Plaintiff's attorney, that Plaintiff comment on his then pending litigation providing certain details for that matter. Plaintiff then, *inter alia*, repeatedly reminded to Defendant #6 that pursuant to NJSA 2A:15-1 he was a *pro se* litigant in the formal judicial proceedings without means to retain a professional counsel and that pursuant to the January 18, 2008 order he had been compelled by Hon. Menelaos W. Toskos, J.S.C. to appear in person in the US on or before February 29, 2008 otherwise Plaintiff would lose his meritorious state court case to his adversaries and his ability to recover his economic and non-economic damages way in excess of $300,000 and that Plaintiff had already forwarded his legal warnings to Defendants in connection with Defendants' violation of his rights guaranteed to him by the due process clauses of the Fifth and Fourteenth Amendments and by the equal protection clause of the Fourteenth Amendment to the US Constitution and that Plaintiff had certain mental illness which was not dangerous, however.

97. Defendant #6 then asked Plaintiff to stop talking. Obviously, Defendant #6 was not prepared to vest all the responsibility with himself for performance of certain functions in connection with Plaintiff's state judicial proceedings. Defendant #6 was obviously in need of some further authorization for taking further actions against Plaintiff in connection with the January 24, 2008 request for access to court. Defendant #6 asked Plaintiff to take a seat and wait. Meanwhile, Defendant #6 conferred

with[21] Defendant #5 for certain period of time which Plaintiff witnessed personally. During that time Plaintiff witnessed that Defendant #6 started to confer with Defendant #5, then waited certain period of time for Defendant #5 while she was conferring by certain means with somebody else[22] and then resumed conferring with Defendant #6; Plaintiff could not hear Defendant #6 and Defendant #5 speaking to each other or Defendant #5 conferring by certain means with somebody else. Rather, Plaintiff saw Defendants speaking and that meanwhile Defendant #6 and Defendant #5 once looked at Plaintiff and smiled ironically. In this connection, Plaintiff submits to the court that to him that smile of Defendant #6 and Defendant #5 looked like as if they were saying to each other at that specific moment of time: "Look, here is this mentally ill Russian again!" (emphasis added.)

98. After Defendant #6 was done conferring as described *supra*, he waved his hand at Plaintiff asking him to come up. Plaintiff came closer and saw that Defendant #6 was also, just like Defendant #5 previously, wearing, figuratively speaking, the mantle of a state court judge which did not fit him because it was not his function either. (emphasis added.) Unlike Defendant #5 previously, Defendant #6, after having conferred as described *supra*, was a man of few words. Visibly resolved this time, acting under color of federal authority and harboring in-

---

[21] In person and orally, by means of face-to-face conversation, and by exchanging certain documents electronically and/or otherwise, with a purpose to discuss the situation in order to reach an agreement and make certain joint decisions.

[22] Defendant #5 used her computer, certain documents, and a telephone to confer with somebody; also Defendant #5 orally spoke to somebody who was outside of Plaintiff's field of view.

vidiously discriminatory animus towards mentally ill Plaintiff, and addressing Plaintiff's January 24, 2008 request for access to court that was sitting in front of him on his desk, Defendant #6, speaking on behalf of Defendants, squarely advised Plaintiff that, *inter alia*, he, Plaintiff, may not further participate in the state court lawsuit in the Unites States in his person and appearing *pro se*.

99. Defendant #6 then, figuratively speaking, dropped the mantle of a state court judge; in connection with Plaintiff's January 24, 2008 formal visa application barcode #E1FD1MSWW8 and continuing to act under color of federal authority and without conferring with anybody or asking anybody's advice because it was his day-to-day activity, he quickly and without any hesitation performed a discretionary act within the scope of his authority and official responsibilities by advising Plaintiff that he would not grant him a new entry visa to the US because for purposes of INA 214(b), codified at 8 USC 1184(b), he personally presumed Plaintiff to be an immigrant whose social, familial, and/or economic ties to Russia were not strong enough.

100. Defendant #6 then silently gave Plaintiff back his passport together with certain other documents enclosed therein, including but not limited to the January 24, 2008 request for access to court and a copy of the January 18, 2008 order of the state court. Plaintiff took it all, pulled out a copy of the January 18, 2008 order, placed it back in front of Defendant #6, and squarely asked Defendant #6: "Did you see the court order?" Being visibly nerv-

ous[23] at that specific moment of time, Defendant #6 laconically responded, looking at a copy of the January 18, 2008 order, with "we saw it." (emphasis added.) In this connection, Plaintiff submits to the court that such Defendant #6's response left Plaintiff speechless for a moment; Plaintiff momentarily thought that the January 18, 2008 order of the American court, entered by the American judge, was nothing more than a piece of meaningless, contemptible, and worthless paper to Defendants who were above all those courts, court judges and their orders, and the entire American judicial system because each and all Defendants were some kind of "Ultimate Judges" themselves. (emphasis added.)

101. Plaintiff then made an attempt to pull himself together; he then advised Defendant #6, asking him to advise Defendants accordingly, that unless Defendants immediately rectify the situation created by their conspiratorial actions taken against Plaintiff, and certain pattern of conduct for that matter, in connection with his several requests for access to court and his state judicial proceedings, he would immediately prepare and file a lawsuit against Defendants seeking appropriate relief because such Defendants' actions interfered with, and obstructed, the due course of justice in state judicial proceedings, posed real threat to his safety, welfare, and property, violated his clearly established constitutional rights, and were motivated by intent to deprive Plaintiff of the equal protection of the laws and the equal privileges under the laws, to which Plaintiff was entitled, on ac-

---

[23] Just like any other similarly situated reasonable person would be, knowing that he was squarely and openly obstructing a court order.

count of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey (the "February 5, 2008 legal warning"). (emphasis added.)

102. Plaintiff then left the Embassy terrorized, devastated, helpless, and disgusted at such Defendants' outrageous and egregious pattern of conduct aimed at defeating the due course of justice in Plaintiff's state court proceedings. (emphasis added.)

103. On or around February 5, 2008, and/or thereafter, after Defendant #6 spoke to Plaintiff face-to-face and personally [as described *supra*], he conferred with[24] other Defendants advising them about, *inter alia*, the results of Plaintiff's February 5, 2008 appointment at the Embassy and Plaintiff's February 5, 2008 legal warning for that matter; upon having conferred with each other by certain means, Defendants repeatedly agreed among themselves upon certain pattern of conduct against Plaintiff in connection with his state judicial proceedings and in connection with a possible lawsuit by Plaintiff against Defendants. In particular, and in light of the fact that Defendant Rice had substantive and coordinating responsibility over issues of immunities of the US representatives abroad, and because Plaintiff was actively raising such issues, and also because Plaintiff's legal warnings could result in a personal capacity lawsuit

---

[24] In person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise, with a purpose to discuss the situation with other Defendants, not to simply inform other Defendants about the situation, and in order to reach an agreement and make certain joint decisions about Defendants' further actions against Plaintiff and his state court proceedings.

against each and all Defendants, Defendant Rice repeatedly provided[25] to other Defendants certain further instructions and/or directives on what to do and how to do it in connection with Defendants' actions against Plaintiff and his state judicial proceedings.

104. As a result of conspiratorial actions taken by Defendants against him in connection with his state judicial proceedings, Plaintiff repeatedly suffered anxiety, rage, extreme terror, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, and mental suffering resulting in aggravation of his pre-existing condition. Plaintiff repeatedly dreaded to think that he could lose everything he had achieved prosecuting his state court case. It would mean that all of his previous efforts and sufferings were in vain. Defendants' conspiracy against him, that was being proactively and systematically furthered by Defendants, caused Plaintiff to repeatedly experience severe emotional stress that lasted for certain period of time thereafter and that caused aggravation of his pre-existing condition.

105. On February 15, 2008 and following the February 5, 2008 legal warning, Plaintiff forwarded to Defendants via facsimile and email his written legal warning letter (the "February 15, 2008 legal warning") repeatedly advising Defendants about the fact that their actions taken against Plaintiff in connection with his state judicial proceedings clearly violated, *inter alia*, Plaintiff's rights guaranteed to him by the due process clause of the Fifth

---

[25] In person and/or otherwise, orally and/or otherwise, by means of face to face and/or telephonic conversation(s), and/or by exchanging certain documents electronically and/or otherwise.

Amendment to the US Constitution, and about a possibility of a legal action against Defendants. Defendants confirmed receipt of the February 15, 2008 legal warning via return email sent to Plaintiff. Defendants had yet another opportunity to withdraw from their conspiracy against Plaintiff by taking affirmative steps to terminate or abandon their personal participation in it; Defendants, however, refused to use such an opportunity.

106. Upon being properly served with both the February 5, 2008 and February 15, 2008 legal warnings, Defendants reached certain agreement among themselves[26] with a purpose to further, by certain means, their conspiracy against Plaintiff in connection with his requests for access to court and his state judicial proceedings. None of Defendants ever withdrew from her/his conspiracy against Plaintiff by taking affirmative steps to terminate or abandon her/his personal participation in it.

107. The February 5, 2008 and February 15, 2008 legal warnings, that followed the November 29, 2007 and December 4, 2007 legal warnings, were sufficient, reasonable, and repeated notices to Defendants of the imminent personal or official capacity litigation against them either in foreign or US courts. In this connection:

a) 7 FAM 971.1(c) unequivocally instructed the Embassy and, therefore, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #5, and Defendant #6 to "notify the Department

---

[26] By certain means, in person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise.

(L/DL), by telegram at once of the potential litigation" (7 FAM 971.1(c));

b) 2 FAM 284.3(a) unequivocally instructed the Embassy and, therefore, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #5, and Defendant #6 that "the Department.... should be promptly informed of... imminent litigation against the United States with such details as to... nature of suit as may be available, and such recommendations as the post may wish to have considered in respect of its particular local situation. Information regarding the nature of the suit should include a detailed report on both the facts of the case and the issues that... are expected to be raised in the litigation by any party to the case. The post should initially report... imminent litigation by telegram... The post's telegraphic report should be followed by a more detailed report... Copies of all pertinent documents should be forwarded to the Department with the post's airgram" (2 FAM 284.3(a));

c) 2 FAM 226(a) unequivocally instructed the Embassy and, therefore, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #5, and Defendant #6 that "each post shall inform the Department of any litigation in a local court in which a US citizen employee may become involved in employee's private capacity. The post's report should be in the form prescribed in 2 FAM 280 for reporting suits against the United States..." (2 FAM 226(a)); and

d) 2 FAM 226(b) unequivocally instructed, at least, Defendant Burns, Defendant Russell, and De-

> fendant Amend that they were "responsible for reporting to their posts of assignment litigation in foreign courts in which they may become involved." (2 FAM 226(b).)

108. In light of the foregoing, in February 2008, Defendant Rice was at least constructively notified by other Defendants, including but not limited to, via certain official channels, about the imminent litigation[27] against Defendants by Plaintiff and was provided for that matter with certain detailed reports on facts and issues that were expected to be raised in such litigation, as unequivocally prescribed by, *inter alia*, pertinent parts of 7 FAM 971.1(c), 2 FAM 284.3(a), 2 FAM 226(a), and 2 FAM 226(b). Upon reaching certain agreement among themselves[28] in February 2008, Defendants decided, among other things, to ignore Plaintiff's legal warnings altogether and to further their conspiracy against Plaintiff in connection with his state judicial proceedings by, *inter alia*, finding justified, necessary and advisable (a) continuing denial of Plaintiff's right of access to court and right to a fair and objective trial, (b) obstruction of the January 18, 2008 order of the state court, (c) possible destruction of Plaintiff's evidence in connection with his state court proceedings, (d) continuing violation of Plaintiff's certain due process and constitutional rights, etc.

109. In particular, in February 2008:

---

[27] Litigation where Defendant Rice could become involved as a defendant in her private capacity.

[28] By certain means, in person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise.

a) Defendants had certain knowledge that Defendant #5 and Defendant #6 had been engaged in conduct that posed an unreasonable risk of constitutional injury to Plaintiff, yet they chose to facilitate and/or approve and/or condone such conduct and to act with a conscious disregard for the risk of constitutional injury to Plaintiff;

b) Defendants provided, by certain means, certain instructions and/or directives to Defendant #5 and Defendant #6 as to what actions, including further actions, and how such actions, including further actions, must be taken, and what pattern of conduct must be followed, against Plaintiff in connection with his state judicial proceedings in order to defeat the due course of justice therein;

c) Defendants ensured by using certain means that Defendant #5 and Defendant #6 complied fully with all such instructions and/or directives; none of Defendants ever withdrew from her/his conspiracy against Plaintiff by taking affirmative steps to terminate or abandon her/his personal participation in it; and

d) Defendants, by using certain means, assured Defendant #5 and Defendant #6 and each other that Plaintiff was, and would continue to be, precluded by law and defense of immunity from seeking redress for Defendants' conspiratorial actions against Plaintiff in connection with his state court lawsuit, such that Defendants could rest assured in this connection.

110. Plaintiff then repeatedly advised the state court defendants about continuing interference by federal Defendants with the due course of justice in state judicial

proceedings and federal Defendants' obstruction of the January 18, 2008 order of the state court. The state court defendants repeatedly used such Defendants' interference and conspiracy to their advantage and filed another motion to dismiss based on Plaintiff's failure to attend his deposition in Hackensack, NJ compelled by the January 18, 2008 order. That motion to dismiss was originally returnable on March 14, 2008, but the state court later adjourned it, on its own initiative, to March 28, 2008 instead so that it could be heard in conjunction with Plaintiff's motion for a protective order that Plaintiff made with the state court praying for appropriate relief in light of federal Defendants' interference and conspiracy. In their submissions to the state court, the state court defendants averred, *inter alia*, that under the then present circumstances the state court had to release them from the lawsuit unpunished, despite the detriment caused by them to Plaintiff that they had previously admitted, and that Plaintiff had to file a lawsuit against federal Defendants instead.

111. The state court had no jurisdiction and/or authority over federal Defendants and their conspiratorial actions taken against Plaintiff's state court lawsuit. On March 28, 2008, Hon. Menelaos W. Toskos, J.S.C. heard the state court defendants' motion to dismiss opposed by Plaintiff together with Plaintiff's motion for a protective order. In light of extraordinary circumstances created by Defendants, motion to dismiss was granted and the March 28, 2008 order was entered dismissing Plaintiff's state court *pro se* complaint against one of the state court defendants based on Plaintiff's failure to appear in person in the US for his deposition compelled by the Janu-

ary 18, 2008 order; Plaintiff's motion for a protective order was denied.

112. On May 23, 2008, remaining state court defendant moved the state court to dismiss based on Plaintiff's failure to attend his deposition in Hackensack, NJ compelled by the January 18, 2008 order; Plaintiff opposed. On May 23, 2008, the state court entered its order dismissing Plaintiff's state court *pro se* complaint against the remaining state court defendant.

113. Instituted in January 2007, Plaintiff's meritorious state court lawsuit was dismissed on May 23, 2008 due to Plaintiff's failure to comply with the January 18, 2008 order which was a direct and immediate result of Defendants' interference with the due course of justice in state judicial proceedings and Defendants' systematic and continuing conspiracy against Plaintiff for that matter.

114. In February-May 2008, Defendants repeatedly reached certain agreement among themselves[29] and conspired against Plaintiff in order to, among other things, continue violating, by certain means, Plaintiff's fundamental right of access to court and to a fair and objective trial in connection with his state court lawsuit and continue ignoring all Plaintiff's legal warnings to Defendants.

115. Although it was never a prerequisite for institution of the instant lawsuit against Defendants, Plaintiff made an attempt, a very burdensome one for him, to mitigate his damages in connection with Defendants' con-

---

[29] By certain means, in person and/or otherwise, orally and/or otherwise, by means of face-to-face and/or telephonic conversations, and/or by exchanging certain documents electronically and/or otherwise.

spiracy against him by trying to appeal the dismissal of his state court lawsuit. (emphasis added.) Plaintiff properly prepared and filed, on May 6, 2008, his otherwise needless appeal with the Superior Court of New Jersey, Appellate Division despite the fact that it looked more like a drowning man's catching at a straw. (emphasis added.) Appellate Division assigned that case Docket No. A-4305-07T1 (the "Docket #2") and advised Plaintiff that the Docket #2 would be subject to dismissal if a transcript would not be filed within 35 days. Plaintiff made his motion with Appellate Division for a transcript to be provided to him at public expense because, *inter alia*, he was indigent and absolutely destitute and neither of acceptable forms of payment for a transcript, i.e. by personal check or money order, was physically available to Plaintiff from Moscow, Russia where he was forced to remain by Defendants against his will and to his detriment. On July 11, 2008, Appellate Division advised Plaintiff via UPS that he would have to pay for a transcript either by personal check or money order. Without a transcript Plaintiff could not proceed with his appeal. If not for Defendants' conspiracy that was being systematically furthered by them against him, on or around July 11, 2008 Plaintiff still had an opportunity to return to the US and to try to comply with Appellate Division's requirements to proceed with his appeal.

116. Plaintiff's material evidence in connection with his state court lawsuit, as well as certain property in the United States got lost, damaged, or destroyed as a result of Defendants' conspiracy against Plaintiff and Defendants' interference with the due course of justice in the state court lawsuit. Plaintiff used to store all of his material evidence in connection with his state court lawsuit in

an apartment in the Bronx, NY. Because of the then pending state court lawsuit, Plaintiff planned to return to the United States within a reasonable period of time. In light of the fact that Defendants eventually forced Plaintiff to remain in Russia against his will and to his detriment, that apartment could not wait forever for Plaintiff's return and was rented to somebody; Plaintiff's material evidence was disposed of. This would never happen if Plaintiff returned to the United States within a reasonable period of time; this could be prevented only if Plaintiff returned to the United States personally and within a reasonable period of time. Therefore, Defendants, through their personal actions [as described *supra* herein], effectively foreclosed any possibility for Plaintiff to ever win his state court lawsuit, on appeal or otherwise, because Defendants' actions taken against Plaintiff resulted in, *inter alia*, destruction of Aleksandr Malyutin's evidence in connection with his state court litigation. (emphasis added.)

117. The following is just one example of how Plaintiff has been injured in his property by Defendants' conspiracy against him. Plaintiff left his car parked on a street with no alternate side parking regulations in the Bronx, NY where it could be legally parked for months and, at any rate, during the time that Plaintiff planned to spend in Russia. Forced by Defendants to remain in Russia against his will and to his detriment, Plaintiff could not renew his inspection and registration from Moscow when it eventually became due; the car got ticketed nine times and in excess of $1,150 and got towed away by NYC Sheriff and recycled or auctioned off. This would never happen if Plaintiff returned to the United States within a reasonable period of time; this could be prevented only if

Plaintiff returned to the United States personally and within a reasonable period of time. The car, as described in this paragraph, was also a piece of Plaintiff's material evidence in connection with the Docket #1.

118. Defendants eventually caused Plaintiff's worst nightmares to come true. (emphasis added.) Now that the state court lawsuit has been dismissed and removed from the state court's docket, Plaintiff's material evidence has been lost, damaged, or destroyed, and Plaintiff's right to appeal has been defeated, Plaintiff's remedy is damages only.

119. As evidenced from this complaint, Plaintiff does not base any of his claims against Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend on the doctrine of *respondeat superior*. Under the facts presented [see *supra* herein], Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend were personally involved because, *inter alia*, they failed to remedy the violation after learning of it, allowed the custom or policy fostering the violation to continue after learning of it, were grossly negligent in supervising their subordinates who caused the violation, failed to act on information indicating that unconstitutional acts were occurring, failed to discipline Defendant #5 and Defendant #6 despite the fact that Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had such authority, and were affirmatively linked to violation of constitutional rights and deprivation of the equal protection of the laws and the equal privileges under the laws, to which Plaintiff was entitled, because Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend took no action against Defendant #5 and Defendant #6, and chose to facilitate

and/or approve and/or condone certain actions against Plaintiff, by certain means, including but not limited to, by providing certain instructions and/or directives to Defendant #5 and Defendant #6 as to what actions, and how such actions, must be taken, and what pattern of conduct must be followed, against Plaintiff in connection with his state judicial proceedings in order to defeat the due course of justice therein and by ensuring, by using certain means, that Defendant #5 and Defendant #6 complied fully with all such instructions and/or directives, to Plaintiff's detriment.

120. Additionally, personal involvement by Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend is properly alleged *supra* herein because, *inter alia*, (a) Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had knowledge, actual and/or constructive, that Defendant #5 and Defendant #6 were engaged in conduct that posed an unreasonable risk of constitutional injury to Plaintiff, (b) response of Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the offensive practices, (c) there was an affirmative causal link between inaction of Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend and the particular constitutional injury suffered by Plaintiff, and (d) Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend acquiesced in the unconstitutional behavior and tolerated past and ongoing misbehavior of Defendant #5 and Defendant #6 against Plaintiff.

121. Additionally, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend failed to avoid

individual liability because, *inter alia*, they failed to oversee Defendant #5 and Defendant #6 in a manner that was not deliberately indifferent to, *inter alia*, Plaintiff's constitutional rights; Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend were persons in the decision making chain whose deliberate indifference permitted the constitutional abuses to continue unchecked. Several times Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend were placed by Plaintiff on notice of a danger and chose to ignore the danger notwithstanding such notices.

VI. QUESTION OF DEFENDANTS' IMMUNITY

122. Acting under color of federal law, Defendants, *inter alia*, interfered with the due course of justice in state judicial proceedings where Plaintiff was a *pro se* indigent mentally ill litigant by performing certain functions that were clearly and unequivocally outside of the scope of Defendants' authority and that were never authorized by the Congress, Constitution, or laws of the United States.

123. It is well settled that immunity attaches to function, not to the manner in which it is performed. (emphasis added.) Among other things, Defendants, figuratively speaking, put on the mantles of state court judges and were functioning as some ugly arm of the state court; Defendants, *inter alia*, denied Plaintiff his right to further prosecute his state court case and to bring it to trial appearing *pro se*; it was, however, a function of a court judge that could be proper only if Plaintiff were judicially found to be mentally incompetent. Defendants, therefore, failed to keep within the limits of their authority.

124. Immunity does not protect Defendants because their actions against Plaintiff in connection with his state judicial proceedings were not, and could not reasonably be, part of their official functions. None of Defendants was a party to, or appeared in any capacity in, the state court lawsuit, to allow them any voice there.

125. Defendants' conduct violated Plaintiff's constitutional rights that had been clearly and repeatedly established by Plaintiff, at the time of each violation, orally and/or in writing with citation of applicable law just in case Defendants had never heard before about existence of such rights or law. "Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992). Under the facts of the instant matter, Defendants have knowingly and willfully transgressed several times one of the brightest lines out there with such light intensity that can make a blind person's eyes capable of seeing again.

126. Defendants in this case have knowingly stripped themselves of their official character and subjected themselves to the consequences of their individual conduct. Defendants have forfeited their immunity because of their failure to comply with, *inter alia*, elementary principles of procedural due process. Defendants acted in clear absence of any jurisdiction over the state court lawsuit. Neither Constitution nor Congress or federal laws of the United States contained any authority for Defendants' interference with ongoing state judicial proceedings and, therefore, support for Defendants' actions can be found nowhere. Judicial systems would be upset if Defendants were allowed to interfere with ongoing court proceedings defiantly telling state court judges and liti-

gants who may or may not proceed with litigation and prescribing some illegal and knowingly impossible to be complied with prerequisites for that matter, like compelling indigent *pro se* litigants to retain a professional counsel, etc.

127. Acting under color of federal authority, Defendants willfully and knowingly stepped on the slippery slope of, *inter alia*, denying to Plaintiff, a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey, the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled by reason of his substantial voluntary connections with the United States.

128. Under the facts presented *supra*, each and all Defendants stand before the law in the instant suit merely as private individuals. Immunity does not apply here.

VII. CAUSES OF ACTION

A. FIRST CAUSE OF ACTION

Violation of Plaintiff's clearly established constitutional rights by Defendants acting under color of federal authority

Bivens cause of action

129. Plaintiff has a valid *Bivens* cause of action. Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 US 388 (1971).

130. Plaintiff has voluntarily accepted significant societal obligations in, and developed significant and substantial voluntary connections and sufficient contacts with the United States and with the United States legal system which, according to abundant US case law, entitles

him to, and invests him with rights guaranteed by, *inter alia*, the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution as well as by the equal protection clause of the Fourteenth Amendment. Under the above stated facts, Plaintiff left the United States on November 24, 2007 for a short-term trip to Russia relying, *inter alia*, on proper assurances of the agent of the DHS [see *supra* herein] that Plaintiff would not have problems returning to the United States in connection with his state court lawsuit; in this connection, Plaintiff submits to the court that the shield which the Bill of Rights, the equal protection of the laws, and other parts of the Constitution of the United States provided to protect Plaintiff's rights while he remained in the United States in connection with state judicial proceedings there should not be stripped away because he was forced by Defendants, who conspired against him for that matter, to remain in another country against his will and to his detriment. (emphasis added.)

131. There are no available alternative forms of relief to Plaintiff for violation of his constitutional rights. The US Congress has not provided adequate remedies for rectification of cognizable constitutional wrongs in this particular and unique setting where Plaintiff, an extra-territorial nonresident alien with present whereabouts outside of the US, was a *pro se* litigant in state judicial proceedings in the US. (emphasis added.) Plaintiff's injury may now be redressed by a damages remedy only. If *Bivens* action were inapplicable to Defendants, the costs of their constitutional violations would be borne solely by Plaintiff who would not have any redress for that matter and which, in its turn, would clearly violate the principle that for every wrong, there should be a remedy. Under

the facts and circumstances of the instant matter, remedy for Defendants' violations of Plaintiff's constitutional rights is damages or nothing.

132. Plaintiff has properly alleged and provided specific facts that he has been deprived of his constitutional rights by Defendants acting under color of federal authority and that such rights were clearly established by him at the time of each such violation.

133. Because the doctrine of *respondeat superior* does not apply in *Bivens* actions, Plaintiff has properly alleged and provided specific facts that each Defendant was personally involved in violation of his constitutional rights.

134. Plaintiff's *Bivens* claim is also based on Defendants' conspiracy against him; Plaintiff has properly alleged, and provided specific facts for that matter, the existence of an express and/or implied agreement among Defendants to violate Plaintiff's constitutional rights and that such conspiratorial agreement furthered by Defendants eventually resulted in, *inter alia*, actual violation of his constitutional rights.

135. Under the facts of the instant matter, Plaintiff submits that recognizing *Bivens* cause of action in the instant case should not require judicial review of the Executive Branch's conduct of Foreign Affairs and would not imply an extraterritorial reach of such cause of action. Despite the fact that Plaintiff presently remains in Russia where he was forced to remain against his will and to his detriment by Defendants, all constitutional violations were ultimately committed by Defendants in the United States because the source of Plaintiff's rights for that matter has always been there together with the state court litigation itself where Plaintiff was simply seeking justice as a *pro se* indigent litigant; should this

Court enter its judgment against Defendants and their US-based personal assets, as Plaintiff demands in this complaint, enforcement of such judgment will also be in the United States.

136. *Bivens* liability attaches in the instant matter to top-level officials as well who are in no way scapegoats; such officials were the true and ultimate decision-makers in the conspiracy against Plaintiff. *Bivens* cause of action and remedy is also available to Plaintiff in this particular case because it involves no special factors counseling hesitation in the absence of affirmative action by Congress. As indicated *supra*, Defendants conspired among themselves, *inter alia*, to not respond to several legal warnings properly served on them by Plaintiff; Defendants have not responded to such legal warnings within a reasonable period of time or ever; therefore, pursuant to the doctrine of estoppel by acquiescence, Defendants have acquiesced several times to the instant lawsuit against them and to all damages to which Plaintiff may be entitled, including but not limited to damages recoverable under *Bivens*; Defendants have further acquiesced to the fact that judicially created remedies against them might be appropriate even if requiring them to defend against Plaintiff's lawsuit might inhibit their efforts to perform their official duties and that they might have the resources to answer whatever verdict that may be entered against them for that matter.

B. SECOND CAUSE OF ACTION
Violation of the second clause of 42 USC 1985(2), as provided for by 42 USC 1985(3)

137. Defendants have conspired for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in state judicial proceedings, where Plaintiff was seeking justice as a *pro se* indigent litigant, with intent to deny to Plaintiff, a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey, the equal protection of the laws and the equal privileges under the laws; Defendants performed acts in furtherance of their conspiracy whereby Defendants eventually injured Plaintiff, both in his person by aggravating his pre-existing condition and in his property, because Plaintiff was lawfully enforcing, and/or attempting to enforce, his rights to the equal protection of the laws and the equal privileges under the laws, and eventually deprived Plaintiff of such his rights to which he, by virtue of his substantial voluntary connections with the US, was entitled as if he were a citizen of the United States.

138. Plaintiff has properly alleged that Defendants conspired against him; Defendants worked together by agreement to commit certain acts using certain methods to Plaintiff's detriment; Defendants each time agreed among themselves to take actions against Plaintiff before taking such actions. Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend, by their own conduct, willfully and personally associated themselves with, and became members of the conspiracy against Plaintiff.

139. Plaintiff has properly alleged that Defendants took their actions against him out of discriminatory animus towards him as a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey. Plaintiff properly advised Defendants [see *supra* herein] that he had certain mental illness, that his mental disorder was not dangerous, and that he was a person of sound mind and judgment who had never posed threat to his own property, safety, or welfare or that of others. Plaintiff has never been judicially declared incompetent; he has never lacked standing to appear *pro se* in formal judicial proceedings or capacity to sue and be sued. Plaintiff further advised Defendants that he was appearing *pro se* in the court of the state of New Jersey pursuant to NJSA 2A:15-1. Knowing the fact that Plaintiff was of full age, Defendants repeatedly advised him that he may not further prosecute his state court lawsuit and bring it to trial in person in the United States appearing *pro se*. Therefore, for purposes of the clearly established law, Defendants treated Plaintiff as a person of unsound mind [see NJSA 2A:15-1], while there was no evidence at all to show or to establish that Plaintiff had ever been or actually was a person of unsound mind. (emphasis added.) Under the facts and circumstances and in the context of the instant matter, "unsound mind", although not defined in New Jersey Permanent Statutes, is unequivocally equated with a mental illness. Therefore, Defendants constructively asserted and actually acted on the basis of their own presumption that Plaintiff was a mentally ill person and a person of unsound mind for that matter, yet they totally failed to prove the affirmation of such position by explicit evidence or any proof whatsoever; Defendants conspired to discriminate against Plaintiff

and such Defendants' conspiratorial actions were clearly motivated by invidiously discriminatory animus towards mentally ill Plaintiff [see *supra* herein]. It is undisputed that a class of mentally ill persons seeking justice in courts of the state of New Jersey is a protected class for purposes of the second clause of 42 USC 1985(2). It is further undisputed that Plaintiff was, and Defendants knew it, an indigent litigant appearing *pro se* in the formal judicial proceedings in the United States. Plaintiff properly advised Defendants that he had certain mental illness and Defendants acted on the basis of such Plaintiff's information and on the basis of their own presumption that Plaintiff was a mentally ill person. Under the facts and circumstances and in the context of the instant matter, Plaintiff was entitled to the equal protection of the laws and the equal privileges under the laws being a litigant in state judicial proceedings in the US; Plaintiff could enjoy such privileges only appearing *pro se*. (emphasis added.) By repeatedly and willfully denying him the right to, and advising him for that matter that he may not, further prosecute his state court lawsuit and bring it to trial appearing *pro se*, Defendants deprived Plaintiff of the equal protection of the laws and the equal privileges under the laws because he was a mentally ill person seeking justice in New Jersey state court.

140. Under the facts of the instant matter, there is also further evidence that Defendants discriminated against Plaintiff and deprived him of the equal protection of the laws and the equal privileges under the laws because he was a mentally ill person seeking justice in New Jersey state court. In this connection only, Plaintiff respectfully refers the court to paragraph 29, pages 15-16, see *supra*; Aleksandr Malyutin's girlfriend was his witness in con-

nection with, *inter alia*, events described *supra* in paragraph 38, pages 19-20. On November 27, 2007, both Aleksandr Malyutin, as described *supra*, and his girlfriend requested access to court, as a *pro se* litigant and as a willing witness, respectively, and filed their corresponding requests and formal visa applications with Defendants for that matter; in this connection, the only genuine material difference between Aleksandr Malyutin and his girlfriend was that he was a mentally ill person and she was not; (emphasis added); the fact is, from Defendants' point of view, both Aleksandr Malyutin and his girlfriend lacked strong ties to Russia; (emphasis added); Aleksandr Malyutin's girlfriend could in no way establish strong ties to Russia to be eligible for a B1/B2 visa; first, it had been just one month since her return from the US that she had visited for the first time in her life and on her summer work and travel program visa that she had overstayed by several months; second, the US was the first foreign country that she had visited in her life; third, she was a 23-year old single, pregnant, unemployed student of her last year in Russian college and her graduation examinations were fast approaching; fourth, she had no source of income and no assets in Russia; fifth, she had no supporting documents whatsoever during her December 11, 2008 appointment at the Embassy except for her personal written certification that she was a willing witness in connection with formal judicial proceedings in the US; Defendants never denied access to court to Aleksandr Malyutin's girlfriend because she was a willing witness in connection with formal judicial proceedings in the US. Just like his girlfriend, Aleksandr Malyutin too, from Defendants' point of view however, lacked strong ties to Russia, but his status was even of greater im-

portance because he was a *pro se* litigant in ongoing formal judicial proceedings whose rights for that matter were protected by the Constitution, federal and state laws, International Treaties of the US, and by a quite full panoply of procedural safeguards constitutionally required for due process. Unlike his girlfriend, Aleksandr Malyutin was a mentally ill person, and Defendants repeatedly and willfully denied access to court to him and deprived him of the equal protection of the laws and the equal privileges under the laws because of his mental illness and his membership in a protected class of mentally ill persons seeking justice in courts of the state of New Jersey, all as described *supra*. "In addition, of course, persons with mental disabilities have been subject to historic mistreatment, indifference, and hostility." *Olmstead v. L.C.*, 527 US 581, 608 (1999) (Justice Kennedy, concurring in the judgment).

141. Plaintiff has properly alleged that Defendants performed certain acts in furtherance of their conspiracy against him whereby Defendants eventually injured Plaintiff, in his person by aggravating his pre-existing condition and in his property, because Plaintiff was lawfully enforcing, and/or attempting to enforce, his rights to the equal protection of the laws and the equal privileges under the laws, and deprived Plaintiff of such his rights.

C. THIRD CAUSE OF ACTION
Violation of 42 USC 1986

142. Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had personal knowledge that the wrongs conspired to be done against Plaintiff [as

mentioned *supra* herein] were about to be committed, and had power to prevent and/or aid in preventing the commission of such wrongs, yet they neglected and/or refused so to do; in light of the facts mentioned *supra*, such wrongful acts were actually committed against Plaintiff and, therefore, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend are liable to Plaintiff, who got injured, for all damages caused to him by such wrongful acts; Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend by reasonable diligence could have prevented such Plaintiff's damages and they had plenty of time to take such steps, yet they willfully refused to do so and, therefore, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend are guilty of such wrongful neglect and/or refusal.

VIII. PLAINTIFF'S CLAIMS AGAINST DEFENDANTS

A. COUNT I
Violation of Constitutional Rights
Bivens Claim

143. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 142, inclusively, as if set forth in full herein.

144. Defendants had a duty to not conspire to violate and to not violate Plaintiff's constitutional rights.

145. Defendants, in their various activities, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under

color of federal authority and being personally involved in such conspiracy, to violate Plaintiff's various constitutional rights which were special, deserved special status, and were guaranteed to him by the Constitution of the United States, and by actually violating, a number of times and by means of their conspiracy among themselves, Plaintiff's fundamental rights, including but not limited to the right of access to court and the right to a fair and objective trial, as secured by the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution, and the right to equal protection, as secured by the equal protection clause of the Fourteenth Amendment to the US Constitution.

146. As a direct result of the above, Defendants have caused injury to Plaintiff, including by depriving him of, and defeating his various rights that were guaranteed to him by the US Constitution in connection with, *inter alia*:

a) his participation in state judicial proceedings; and
b) his attempt to appeal dismissal of his state court lawsuit.

147. Due to the facts that have been pled and in avoidance of Defendants' immunity, neither defense of sovereign immunity nor defense of absolute or qualified official immunity applies in the instant matter; there is no immunity available to Defendants.

B. COUNT II
Obstruction of Court Order

148. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 147, inclusively, as if set forth in full herein.

149. Defendants had a duty to not conspire to obstruct court orders and to not obstruct court orders.

150. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of federal authority and being personally involved in such conspiracy, to prevent Plaintiff from performing his duties under the January 18, 2008 order knowing, *inter alia*, that it would cause Plaintiff to lose his otherwise meritorious state court lawsuit where he was seeking damages in excess of three hundred thousand US dollars, and by actually preventing Plaintiff, several times and by means of their conspiracy among themselves, from performing his duties under the January 18, 2008 order.

151. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the following manners:

a) by causing Plaintiff to oppose the state court defendants' motions to dismiss and to make his otherwise needless motions with the state court;
b) by causing Plaintiff to lose his otherwise meritorious state court lawsuit;
c) by altering the outcome of the state court lawsuit;
d) by causing Plaintiff to conduct extensive research in order to properly prepare and file his voluminous appeal with Appellate Division in an attempt to appeal the dismissal of his state court lawsuit;
e) by causing Plaintiff to incur otherwise needless expenses;
f) by causing Plaintiff serious emotional and mental injury;

g) by causing Plaintiff to be exposed to a severe and long-lasting emotional stress;
h) by causing Plaintiff to suffer, and to continue suffering, great mental pain and suffering, anxiety, rage, extreme terror, tremendous fright, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, loss of enjoyment of life;
i) by causing aggravation of Plaintiff's pre-existing condition; and
j) by causing Plaintiff to be prevented from obtaining the full enjoyment of life.

C. COUNT III
Destruction of Evidence

152. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 151, inclusively, as if set forth in full herein.

153. Defendants had a duty to not conspire to endeavor to destroy evidence in connection with formal judicial proceedings and to not endeavor to destroy evidence in connection with formal judicial proceedings.

154. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of federal authority and being personally involved in such conspiracy, to prevent Plaintiff from performing his duty to preserve his material evidence knowing that Plaintiff's material evidence in connection with the state court lawsuit would be lost, damaged, or destroyed unless Plaintiff personally re-

turned to the US, and by actually causing such Plaintiff's material evidence to be lost, damaged, or destroyed.

155. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the following manners:

a) by causing Plaintiff's meritorious state court lawsuit where he enjoyed a significant possibility of success on the merits to be significantly impaired;
b) by making it impossible for Plaintiff to further prosecute his state court lawsuit;
c) by precluding Plaintiff from winning his lawsuit against the state court defendants during a fair and objective trial;
d) by causing Plaintiff serious emotional and mental injury;
e) by causing Plaintiff to be exposed to a severe and long-lasting emotional stress;
f) by causing Plaintiff to suffer, and to continue suffering, great mental pain and suffering, anxiety, rage, tremendous fright, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain; and
g) by causing aggravation of Plaintiff's pre-existing condition.

D. COUNT IV
Violation of State Law

156. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 155, inclusively, as if set forth in full herein.

157. Defendants had a duty to not conspire to violate Plaintiff's rights guaranteed to him by the law of the

state of New Jersey and to not violate Plaintiff's rights guaranteed to him by the law of the state of New Jersey.

158. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of federal authority and being personally involved in such conspiracy, to violate Plaintiff's various rights guaranteed to him by New Jersey state law, and by actually violating, a number of times and by means of their conspiracy among themselves, Plaintiff's rights as secured by, *inter alia*, NJSA 2A:15-1 and NJSA 30:4-24.1.

159. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the manners previously enumerated in Count I through Count III, inclusively, which are hereby incorporated by reference.

E. COUNT V

Violation of the second clause of 42 U.S.C. Sec. 1985(2)

160. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 159, inclusively, as if set forth in full herein.

161. Defendants had a duty to not conspire to violate the second clause of 42 USC 1985(2) and to not violate the second clause of 42 USC 1985(2).

162. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of federal authority and being personally involved in such conspiracy, to violate the second clause of 42 USC 1985(2) to Plaintiff's detri-

ment, and by actually violating, a number of times and by means of their conspiracy among themselves, the second clause of 42 USC 1985(2) and performing acts in furtherance of the object of their conspiracy whereby Plaintiff has been injured in his person and in his property and deprived of his rights and privileges, all as previously described.

163. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the following manners:

a) previously enumerated in Count I through Count IV, inclusively, which are hereby incorporated by reference; and
b) by causing Plaintiff's property to be lost, damaged, or destroyed.

F. COUNT VI
Violation of 42 U.S.C. Sec. 1986

164. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 163, inclusively, as if set forth in full herein.

165. Defendants had a duty to not violate 42 USC 1986.

166. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by violating, a number of times and while acting under color of federal authority, 42 USC 1986 to Plaintiff's detriment and by neglecting and/or refusing to prevent or aid in preventing the commission of wrongful acts against Plaintiff, as previously described.

167. As a direct result of the above, Defendants caused injury to Plaintiff, and therefore, Plaintiff seeks all dam-

ages caused by Defendants' wrongful acts against him as previously described in this complaint. (emphasis added.)

G. COUNT VII

Violation of International Treaties of the United States

168. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 167, inclusively, as if set forth in full herein.

169. Defendants had a duty to not conspire to violate Plaintiff's rights guaranteed to him by International Treaties of the United States and to not violate Plaintiff's rights guaranteed to him by International Treaties of the United States.

170. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of federal authority and being personally involved in such conspiracy, to violate Plaintiff's various rights guaranteed to him by various International Treaties of the United States, including those binding on the United States, and by actually violating, a number of times and by means of their conspiracy among themselves, such Plaintiff's rights, including but not limited to the right to equality before law as guaranteed by Article II and right to recognition of juridical personality and civil rights as guaranteed by Article XVII and right to a fair trial as guaranteed by Article XVIII of the American Declaration of the Rights and Duties of Man as made binding on the United States by the Charter of the Organization of American States.

171. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the man-

ners previously enumerated in Count I through Count VI, inclusively, which are hereby incorporated by reference.

IX. MONETARY RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendants, jointly and severally, and award the following monetary relief in favor of Plaintiff, payable from Defendants' US-based personal assets:

a) Compensatory damages in excess of one hundred million US dollars;
b) Exemplary/punitive damages in excess of one hundred million US dollars;
c) Attorney's fees in excess of five hundred thousand US dollars; and
d) Such other and further monetary relief, for an amount deemed reasonable by the trier of fact, to which Plaintiff may be entitled.

X. DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all of the triable issues of this complaint, pursuant to Fed.R.Civ.P. 38.

Respectfully submitted,

/s/ _____
ALEKSANDR MALYUTIN
Pro Se Plaintiff
Davydkovskaya Street, 12/2-49
Moscow, Russia 121352
+7.915.409.8012 direct dial

+1.718.715.1390 direct fax
h2a_program@yahoo.com

Dated: Moscow, Russia
September 22, 2009

STATEMENT OF VERIFICATION
UNSWORN CERTIFICATE UNDER PENALTY
OF PERJURY PURSUANT TO 28 USC 1746

I certify under penalty of perjury under the laws of the United States of America that the foregoing complaint is true and correct. Executed on this twenty second day of September, two thousand and nine, in Moscow, Russia.

_____/s/_____
(Signature)

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, DAVYDKOVSKAYA ST., 12/2-49, MOSCOW, RUSSIA 121352, +7 (915) 409-8012,
PLAINTIFF

v.

CONDOLEEZZA RICE WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, SECRETARY OF THE US DEPARTMENT OF STATE, IN HER INDIVIDUAL CAPACITY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HER AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; WILLIAM BURNS WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, THE US AMBASSADOR TO RUSSIA, IN HIS INDIVIDUAL CAPACITY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; DANIEL RUSSELL WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, DEPUTY CHIEF OF MISSION AT, AND/OR CHARGE D'AFFAIRES AD INTERIM OF, THE US EMBASSY IN MOSCOW, RUSSIA, IN HIS INDIVIDUAL CAPACITY, AND WHOSE

FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; KURT AMEND WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, THE US CONSUL GENERAL AT THE US EMBASSY IN MOSCOW, RUSSIA, IN HIS INDIVIDUAL CAPACITY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; UNKNOWN NAMED WHITE FEMALE WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, THE US CONSULAR OFFICER AT THE US EMBASSY IN MOSCOW, RUSSIA, IN HER INDIVIDUAL CAPACITY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HER AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), UNITED STATES DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310; UNKNOWN NAMED WHITE MALE WHO WAS, AT ALL TIMES RELEVANT TO THIS COMPLAINT, THE US CONSULAR OFFICER AT THE US EMBASSY IN MOSCOW, RUSSIA, IN HIS INDIVIDUAL CAPACITY, AND WHOSE FULL OFFICIAL ADDRESS, WHICH IS THE ADDRESS OF HIS AGENT AUTHORIZED BY LAW TO RECEIVE SERVICE OF PROCESS, IS: EXECUTIVE OFFICE OF THE OFFICE OF THE LEGAL ADVISER (L/EX), US DEPARTMENT OF STATE, 2201 C STREET, NW, ROOM 5519, WASHINGTON, DC 20520-6310, DEFENDANTS.

[Filed: March 02, 2009]

AMENDED VERIFIED *PRO SE* COMPLAINT FOR MONETARY RELIEF

Plaintiff, for his amended verified *pro se* complaint for monetary relief, says and alleges as follows against the above-styled Defendants:

I. INTRODUCTION

1. This is a personal capacity lawsuit brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 US 388 (1971), 42 USC 1985(2), second clause, and 42 USC 1986 by a self-represented indigent Plaintiff Aleksandr Malyutin who proceeds in the above-captioned matter *in forma pauperis*, and who is a mentally ill person of, nevertheless, sound mind and judgment, and who has never been judicially adjudicated incompetent, and who has never lacked standing to appear *pro se* in formal judicial proceedings or capacity to sue and be sued, and whose present status in relation to the United States is that of an extraterritorial nonresident alien with present whereabouts outside of the US ("Plaintiff"), who has, however, voluntarily accepted significant societal obligations in, and developed significant and substantial voluntary connections with the US, and who has sufficient contact with the US legal system, seeking judgment against Defendants, jointly and severally, in the form of monetary relief payable from Defendants' US-based personal assets, for damages resulting

from a series of certain actions, including conspiratorial ones, Defendants knowingly and willfully took acting under color of Federal authority and being personally involved, yet in clear absence of any jurisdiction for taking such actions or performing such functions, against Plaintiff by interfering with, obstructing, neglecting to prevent obstruction of justice, and eventually defeating the due course of justice in formal state court proceedings in the US where Plaintiff had been seeking justice beginning from January 2007 in his person as a *pro se* indigent litigant, and where none of Defendants was even a party, obstructing the state court order and preventing Plaintiff from performing his duties under such order, endeavoring to destruct and eventually causing destruction of Plaintiff's material evidence in connection with, and altering the outcome of, formal state court proceedings, violating a number of times certain clearly established rights to which Plaintiff was entitled and which were guaranteed to him by the due process clauses of the Fifth and Fourteenth Amendments and by the equal protection clause of the Fourteenth Amendment to the US Constitution, as well as by Federal and State laws and International Treaties of the United States of America whereby Plaintiff has been injured in his person and in his property, deprived of the equal protection of the laws and the equal privileges under the laws, to which Plaintiff was entitled, and suffered class-based discrimination on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey.

2. This is not a purely personal, non-official lawsuit because it involves the performance of certain official activ-

ities of the US Department of State (the "DOS"), and/or official duties, by Defendants. In this connection, Plaintiff does not challenge adjudication of his several visa applications and respective denials to grant him a new B1/B2 entry visa to the US, as described infra at pertinent parts of the instant complaint. Plaintiff fully understands the fact that such actions, as described in the second sentence of this paragraph, constitute discretionary acts performed by Defendants within the scope of their authority and that such discretionary acts are, due to their nature, nonreviewable by this Court and beyond this Court's jurisdiction. Just like this Court cannot decide to let Plaintiff into this country, or to order Defendants to issue an entry visa to the US to Plaintiff, the Doctrine of Consular Nonreviewability does not bar this Court from deciding to properly redress legally cognizable and recoverable damages that Defendants have already caused, and still continue to cause, to Plaintiff by entering a judgment against Defendants, jointly and severally, in excess of one hundred million US dollars, payable from Defendants' US-based personal assets, as Plaintiff lawfully demands in this verified *pro se* complaint for monetary relief.

3. Plaintiff fully understands the fact, and hopes for that matter that Defendants too will come to such an understanding, that, inter alia, Defendants' discretion is not boundless irrespectively of the fact that Defendants have repeatedly, unequivocally, and defiantly demonstrated to Plaintiff that it is, and that Defendants may not perform functions of State and/or Federal Court Judges in connection formal judicial proceedings in the United States. (emphasis added). In this connection, Plaintiff reasonably believes and, therefore, friendly and respectfully notifies

and advises each and all Defendants that their conduct has more than civilly actionable consequences and may violate US criminal statutes. "The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution." *Reid v. Covert*, 354 US 1, at 5-6 (1957). "The Constitution imposes substantive constraints on the federal government, even when it operates abroad." 856 F.2d 1214, at 1218 (1988).

4. Aleksandr Malyutin hereby demands that each and all Defendants address allegations of this complaint "to the satisfaction" of the self-represented indigent Plaintiff. (emphasis added; expression borrowed from INA 214(b), codified at 8 USC 1184(b)).

II. JURISDICTION AND VENUE

5. Jurisdiction of this Court is invoked under 28 USC 1331 and the Constitution of the United States, Article III Section 2, because this action arises under:

(a) The Constitution of the United States; and

(b) Federal and State laws of the United States; and

(c) International Treaties of the United States that are binding on the United States.

6. Jurisdiction is properly vested in this Court pursuant to 28 USC 1332(a)(2) because this action meets the following basic conditions:

(a) The matter in controversy exceeds $75,000, exclusive of interest and costs; and

(b) Plaintiff is a citizen of a foreign state, the Russian Federation ("Russia"); and

(c) None of Defendants is a citizen of the same state as Plaintiff.

7. Jurisdiction of this Court is further invoked under 28 USC 1343(a)(1)(2) over causes of action arising under:

(a) 42 USC 1985(3) for violation of the second clause of 42 USC 1985(2); and

(b) 42 USC 1986.

8. Jurisdiction of this Court is further invoked under 28 USC 1367 over Plaintiff's State law claims against Defendants necessary to disposition of the instant case.

9. This Court has authority to award attorney's fees, as part of the costs, pursuant to 42 USC 1988(b).

10. Venue is proper in this judicial district under 28 USC 1391(b)(3).

III. PARTIES

A. Plaintiff

11. Born in 1972 in Moscow, Aleksandr Malyutin is a thirty-seven year old citizen of Russia. He is a native of Moscow, Russia and currently resides there; his native language is Russian. Aleksandr Malyutin is a 1994 graduate from one of the most prestigious Russian Universities, Moscow University for International Affairs (MGIMO), where he majored in Journalism and International Tourism. Aleksandr Malyutin has no formal legal education. Beginning from approximately 1993 and up to the present time, Aleksandr Malyutin has been an independent self-employed person always personifying the spirit of entrepreneurship, creativity and adventure.

12. Prior to 2006, Aleksandr Malyutin (a) never experienced any symptoms of a mental illness, although he had

certain predisposition to stress, (b) never had a mental illness diagnosable in accordance with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, and (c) was not a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey.

13. Between 1993 and 2007, Aleksandr Malyutin visited a number of foreign countries, including Finland, Germany, Great Britain, Holland, Indonesia, Ivory Coast, Japan, Philippines, Poland, Thailand, and the United States; during this time period, he visited the United States twenty times, each time on B1/B2 visas routinely issued to him by the US Embassy in Moscow, Russia (the "Embassy"). Between 1993 and 2007, Aleksandr Malyutin spent a total of approximately 1,173 days in the United States, both on business and for pleasure. Approximately in 1993-1994, Aleksandr Malyutin established his Social Security Number in the United States. Although a citizen of a foreign country with present whereabouts outside of the United States, over a period of at least fourteen years Aleksandr Malyutin has voluntarily accepted significant societal obligations in, and developed significant and substantial voluntary connections with the United States and sufficient contact with the US legal system which, according to abundant US case law, entitles him to, and invests him with certain rights guaranteed by the US Constitution, Federal and State law to all people within the borders of the United States.

14. In September 2006, while he was in the United States, Aleksandr Malyutin formed an installment contract for sale (the "contract") with two American companies from the state of New Jersey (the "state court defendants") and actually started purchasing from them

and shipping to his business partner in Russia, with whom Aleksandr Malyutin had a supply contract for that matter, certain expensive equipment manufactured and distributed in the United States by the state court defendants. Prior to forming the contract with the state court defendants, Aleksandr Malyutin conducted negotiations with both of them via telephone and by means of his personal business meeting in Wyckoff, NJ with a president of one of the two New Jersey based companies; Aleksandr Malyutin properly advised the state court defendants about his particular requirements and needs, including, but not limited to the fact that the very existence of his business and his entire life depended on the state court defendants' proper performance; Aleksandr Malyutin received certain assurances for that matter from the state court defendants. (emphasis added). Aleksandr Malyutin played no role in the events that led to the state court defendants' breach of the contract; as a result of the state court defendants' constructive fraud and ensuing breach of the contract and despite a number of reasonable attempts by Aleksandr Malyutin to mitigate his damages for that matter, Aleksandr Malyutin (a) suffered catastrophic economic damages which reduced him to being absolutely destitute and forced him to turn to his friends and family for support in connection with his quest for justice in the US, (b) lost all his monies, (c) lost his only source of income, (d) lost his business, (e) lost his ability to pay his debts, (f) incurred exorbitant debt, and (g) suffered anxiety, rage, extreme terror, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, mental suffering, injury to reputation, and certain other noneconomic damages.

15. Under the then present circumstances, being unable to afford to retain a professional counsel and in order to protect his life, vindicate his rights, and recover his exorbitant economic and noneconomic damages and despite, as Aleksandr Malyutin understands it now, serious health-related problems triggered by the state court defendants' breach of the contract, Aleksandr Malyutin was constrained to start his quest for justice in a foreign country and in a foreign language. (emphasis added; see explanation, for example, at paragraph 30, pages 15-16, and at paragraph 32, page 17). Aleksandr Malyutin started studying court language, applicable law, rules of court, rules of evidence, case law, NJ court system, etc., personally preparing and then prosecuting his state court lawsuit all entirely by himself and without ever resorting to the so-called practice of ghostwriting or help of an attorney.

16. Aleksandr Malyutin has always been and still remains a self-employed person; starting from approximately the end of 2006 and up to the present time Aleksandr Malyutin employs himself full-time as a legal counsel in connection with judicial proceedings in the United States without any compensation for legal services he provides to himself and without any source of income; financial support of his friends and family, for that matter, has never been a source of free money for Aleksandr Malyutin and he will have to repay it within certain period of time upon completion of his litigation in the United States.

17. On January 14, 2007, Aleksandr Malyutin arrived at John F. Kennedy Airport ("JFK") from Russia, presented his B1/B2 visa to certain agents of the US Department of Homeland Security (the "DHS"), and, exer-

cising a number of rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, including, but not limited to the fundamental right of access to court which requires, *inter alia*, having access upon request, requested that certain agents of the DHS admit him to the United States on his B1/B2 visa so that he could personally file his *pro se* lawsuit with New Jersey state court against the state court defendants, prosecute and bring his case to trial in the United States appearing *pro se*. Being impressed, one of the agents of the DHS at JFK responded with supportive: "Go get'em!"

18. On January 14, 2007, Aleksandr Malyutin was admitted into the United States on his B1/B2 visa; it was his nineteenth visit to this country; his personal information and information about the purpose of his visit was properly and routinely entered into, generally speaking, certain computer system accessible to Defendants. Aleksandr Malyutin remained in the United States on his B1/B2 visa until March 24, 2007.

19. Between January 14, 2007 and January 23, 2007, Aleksandr Malyutin was finishing his exhausting work, that he had started in the end of 2006, of preparing his *pro se* complaint to be filed with New Jersey state court; on January 23, 2007, Aleksandr Malyutin personally came to the Bergen County Superior Court of New Jersey, Law Division (the "state court") located in Hackensack, NJ and filed his *pro se* lawsuit against the state court defendants. Despite certain prima facie deficiencies, the state court accepted Aleksandr Malyutin's *pro se* complaint, assigned that civil lawsuit Docket No. BER-L-0569-07 (the "Docket #1"), assigned it to a team of Hon. Menelaos W. Toskos, J.S.C., and set January 10,

2008 as discovery end date. Therefore, on January 23, 2007, Aleksandr Malyutin became a *pro se* litigant in formal state court proceedings in the US.

20. After having been properly served with a summons and prior to filing responsive pleadings, president of one of the American companies, the state court defendant, personally called Aleksandr Malyutin on March 2, 2007 and menacingly warned him by the end of a 12-minute long telephonic conversation that the state court co-defendant, a multi-million dollar company, would "wipe you out" in retaliation for institution the state court lawsuit Docket #1 (the "March 2, 2007 telephonic conversation"). Apparently shortly thereafter, the state court defendants retained one high-priced attorney representing both of them; that defense counsel filed responsive pleadings and a counterclaim, basically speaking, denying everything, blaming Aleksandr Malyutin for everything that had happened, petitioning the state court for attorney's fees, and demanding dismissal of Aleksandr Malyutin's *pro se* complaint unless he posted costs with the state court. (emphasis added). Aleksandr Malyutin prepared and filed his answer to the state court defendants' counterclaim against him using such an opportunity to join additional claims against the state court defendants and to fix certain deficiencies of his *pro se* complaint. Aleksandr Malyutin then started discovery pursuant to applicable New Jersey Court Rules. Aleksandr Malyutin was seeking, *inter alia*, damages way in excess of $300,000.

21. On March 24, 2007, Aleksandr Malyutin left the US and flew to Russia; he returned to the US on April 7, 2007. When Aleksandr Malyutin arrived at JFK from Russia on April 7, 2007 and being by that time a *pro se*

litigant in formal state court proceedings in the United States, he presented his B1/B2 visa to certain agents of the DHS and once again exercised a number of rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, including, but not limited to, the fundamental right of access to court which requires, *inter alia*, having access upon request; Aleksandr Malyutin requested that certain agents of the DHS admit him to the US on his B1/B2 visa to further prosecute his then pending state court case and to bring it to trial in person and appearing *pro se*. Aleksandr Malyutin also advised certain agents of the DHS that due to the nature of judicial proceedings he needed permission to stay in the US longer than usual and that he could not know exactly how long it would take to fully complete his state court lawsuit.

22. On April 7, 2007, Aleksandr Malyutin was admitted into the United States on his B1/B2 visa; it was his twentieth visit to this country; Aleksandr Malyutin was granted permission to remain in the United States on his B1/B2 visa longer than usual in connection with his then ongoing state court lawsuit; his personal information and information about the purpose of his visit was properly and routinely entered into, generally speaking, certain computer system accessible to Defendants. Aleksandr Malyutin remained in the United States on his B1/B2 visa in connection with the Docket #1 until November 24, 2007.

23. As a result of his very hard and extremely exhausting work on the Docket #1 combined with employment of his personal skills and talent, and despite, as Aleksandr Malyutin understands it now, serious health-related problems triggered by the state court defend-

ants' breach of the contract, Aleksandr Malyutin managed to achieve some remarkable results prosecuting his state court lawsuit that had been filed *pro se*, in Law Division, for the first time in his life, in a foreign country, and in a foreign language. (emphasis added). For example, in May 2007, during the course of discovery and, in particular, in his answers to Aleksandr Malyutin's requests for admissions, defense counsel admitted, *inter alia*, detriment caused by both state court defendants to Aleksandr Malyutin together with a number of other previously disputed material facts. In the end of May 2007, dissatisfied and visibly upset with defense counsel's performance, one of the two state court defendants, a multi-million dollar company, retained an additional defense counsel to defend the state court lawsuit against Aleksandr Malyutin; that additional defense counsel turned out to be one of the most prominent law firms in the Mid-Atlantic region whose clientele included Fortune 500 companies. (emphasis added). In June-July 2007, Aleksandr Malyutin and such additional defense counsel made certain motions with the state court; Aleksandr Malyutin filed his motion for leave to proceed *in forma pauperis* which was granted by the state court on July 20, 2007 and which Aleksandr Malyutin had failed to file earlier due to lack of experience back then. The state court appointed a mediator to conduct a free mediation meeting between Aleksandr Malyutin and the state court defendants; the mediator was noticeably impressed by Aleksandr Malyutin's prosecution of his state court lawsuit; during one of his business meetings with Aleksandr Malyutin in Englewood, NJ the mediator nearly fell from his chair when he learnt about the disproportionate defense retained by the state court defendants against in-

digent *pro se* Aleksandr Malyutin. (emphasis added). Refusing to accept the fact that Aleksandr Malyutin was appearing *pro se* in Law Division and was making progress prosecuting his state court lawsuit, both defense counsels defiantly refused to prepare their clients' mediation statements and to settle the state court lawsuit with a *pro se* indigent litigant; despite the fact that Aleksandr Malyutin had meritorious claims against the state court defendants, to settle the state court lawsuit with "unrepresented nobody" who on top of that did not have any legal education and had arrived from some far away overseas country where, according to a legend, bears walked the streets of Moscow and people drank Vodka whenever they were thirsty, would apparently make American defense counsels the mockery of their legal colleagues and could even result in demotion. Between August 2007 and November 2007, Aleksandr Malyutin was preparing to exercise his fundamental right to a fair and objective trial; he was also getting ready to take deposition of the state court defendants upon oral examination and to complete discovery by the court fixed deadline of January 10, 2008.

24. In the beginning of November 2007, Aleksandr Malyutin received via regular mail an Official Legal Notice from the state court (the "Legal Notice") advising him, *inter alia*, that the Docket #1 would be scheduled for trial upon completion of pre-trial discovery; shortly thereafter, the state court set the following dates: (a) March 11, 2008 for settlement conference, and (b) March 24, 2008 for trial.

25. The state court defendants represented by the end of 2007 by already three high-priced American attorneys with numerous years of professional experience never

actually attempted to dismiss Aleksandr Malyutin's *pro se* complaint on summary judgment in light of, *inter alia*, the fact that defense counsel had previously formally admitted detriment caused to Aleksandr Malyutin by both state court defendants. (emphasis added). Therefore, the Docket #1 almost reached its trial stage.

26. All of Aleksandr Malyutin's claims against the state court defendants were based on facts, law, reality, and material evidence kept personally by Aleksandr Malyutin in the United States. Aleksandr Malyutin had what it takes to prove his allegations against the state court defendants and to prevail on the merits of his claims during a fair and objective trial which was indirectly evidenced by, *inter alia*, the fact that the state court defendants had retained several high-priced defense counsels including, as mentioned *supra*, one of the most prominent law firms in the Mid-Atlantic region whose clientele included Fortune 500 companies.

27. Aleksandr Malyutin has always had strong ties to his home country which is evidenced, *inter alia*, by the fact that over a period of at least fourteen years he always returned to Russia after his visits to the United States and other foreign countries. (emphasis added). Upon completion of his state court lawsuit, Aleksandr Malyutin would return to his home country.

28. In reasonable anticipation of a soon and fair judgment against the state court defendants which would be a beginning of a difficult process of bringing his entire life back to normal and in anticipation of a soon return to Russia in that connection, Aleksandr Malyutin and his Russian girlfriend, who happened to be in the US back then on her summer work and travel visa, conceived a baby in approximately September-October 2007; defying

Defendants' tortured logic and nearly maniacal, paranoid and hysterical obsession which is, however, part of their discretion that, *inter alia*, all Russians are presumed immigrants to the US allegedly dreaming about acquiring American citizenship for themselves and their children, Aleksandr Malyutin's girlfriend left the US and returned to Russia; after having returned from the United States where she had overstayed her summer work and travel program visa, she immediately obtained a B1/B2 entry visa to the United States from the Embassy despite the fact that she was a 23-year old unmarried, pregnant, unemployed student of her last year in college with no assets and no source of income in Russia and, therefore, without any strong ties to Russia; she, however, never used her new B1/B2 entry visa to the United States that was valid for one year and never returned to the US in connection with her pregnancy; she remained in Russia where she later gave birth to her child; it was a boy, and he is now a seven-month old proud citizen of Russia. (emphasis added).

29. The state court defendants' breach of the contract had very serious and catastrophic consequences for Aleksandr Malyutin. *See supra* at paragraph 14, page 8. Aleksandr Malyutin was not simply upset, angry, or dissatisfied; he suffered a very serious emotional and mental injury and got exposed to a severe and long-lasting emotional stress that he had never experienced in his life before and that was witnessed by his close friends and family.

30. As a result of the state court defendants' breach of the contract, Aleksandr Malyutin, *inter alia*, incurred debts both in the US and in Russia, debts that he could not pay. Debt related problems are usually resolved the

civilized way in the US; on the contrary, in Russia inability to pay your debts may often lead to death threats and actual killing by Russian mafia. In case a person is not in Russia, but his family is, Russian mafia may make such death threats directly to family members which was the case with Aleksandr Malyutin. Russian mafia may supposedly reach you no matter where you are, especially in the United States where Federal and local governments have been actively pursuing Russian mafia and specifically in the tri-state area of NY-NJ-CT where Aleksandr Malyutin was temporary located. A person needs not to be affiliated with Russian mafia himself; rather, a person's creditor may turn to Russian mafia for help to collect a debt. Upon realizing that the dead-end situation created by the state court defendants' breach of the contract posed real threat to his own life as well as to lives of his family members and that he could not do anything about it, Aleksandr Malyutin experienced a severe emotional stress; Aleksandr Malyutin was exposed to such severe emotional stress for certain period of time. In this connection, certain American lawyers offered Aleksandr Malyutin to immediately use such situation to seek asylum in the US; Aleksandr Malyutin rejected such opportunity right away in light of the fact that he had always had strong ties to his home country which he would never abandon.

31. After the March 2, 2007 telephonic conversation, *see supra* at paragraph 20, pages 10-11, and being uncertain as to the exact meaning of the "wipe you out" phrase, Aleksandr Malyutin looked it up in a dictionary and found, *inter alia*, the following meanings: "to destroy completely" and "to murder or kill". Aleksandr Malyutin then immediately felt himself absolutely vulnerable; he

realized that he had found himself in a totally hostile and unsafe environment where fear of Russian mafia was intensified by oral threats squarely made to him personally by one of the state court defendants. Therefore, the state court defendants once again caused Aleksandr Malyutin to become stricken with fear of immediate injury and death; Aleksandr Malyutin suffered extreme terror, mental anguish and emotional distress. As a result and for the second time in a row, Aleksandr Malyutin experienced another severe emotional stress that lasted for certain period of time.

32. Under the then present circumstances, Aleksandr Malyutin's pending state court lawsuit against the state court defendants and reasonable likelihood of collecting his damages became the only guarantee for Aleksandr Malyutin of his own safety and safety of his family, the only hope for his recovery from, as Aleksandr Malyutin understands it now, serious health-related problems triggered by the state court defendants' breach of the contract and for revival of his business which would allow Aleksandr Malyutin to regain his ability to provide for himself, his family, and his future children. (emphasis added). In order to achieve that result, Aleksandr Malyutin rightfully availed himself of the American legal system that was absolutely the best in the world; this fact gave him additional strength, certainty, and confidence. (emphasis added).

33. In 2007 alone and in connection with the Docket #1, Aleksandr Malyutin was constrained to spend a total of approximately 300 days in the United States, under the stress of litigation in a foreign country and away from his home, family and relatives, which was an extremely stressful, painful, and terrible ordeal for him.

34. By August-September 2007, all the stress caused to Aleksandr Malyutin by the state court defendants' breach of the contract together with ensuing psychologically traumatic events and stressful litigation in a foreign country, all as described in this complaint, triggered the onset of a mental illness in Aleksandr Malyutin that had no physical cause.

35. Due to his indigent and absolutely destitute status which he had been reduced to by the state court defendants' conduct and actions taken against him, Aleksandr Malyutin could not afford to be medically diagnosed by American doctors or to be treated with medication in order to mitigate his symptoms in connection with his condition. Aleksandr Malyutin, however, spoke via telephone with his friend's mother who was a doctor in Russia and lived there, described to her his symptoms, and sought her advice; she advised Aleksandr Malyutin that his condition looked to her like a mental illness and that he needed to immediately seek professional help that could hardly be provided over a telephone; this prompted Aleksandr Malyutin to conduct his own research in connection with his condition and to consult with, *inter alia*, the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; Aleksandr Malyutin's condition was best described by the medical term "bipolar disorder". Aleksandr Malyutin's mental illness did impose costs on himself and others impairing, *inter alia*, his ability to function socially and causing others to be distressed; Aleksandr Malyutin, however, never posed a threat to his own property, safety, or welfare or that of others; he also managed to preserve sound mind and judgment. Aleksandr Malyutin's mental illness has never

been so severe to prevent him from, *inter alia*, having legal capacity to sue and be sued.

36. In October 2007, Aleksandr Malyutin made certain plans to visit Russia (a) with a purpose to seek professional help in connection with his mental illness that he had developed over a period of one year, (b) as part of his preparation for trial that was to take place in the beginning of 2008, and (c) to renew his B1/B2 entry visa to the United States which had expired in August 2007. Because of his then pending lawsuit, where he appeared *pro se*, and coming trial, Aleksandr Malyutin never planned to stay in Russia beyond a reasonable period of time.

37. On November 12, 2007, while Aleksandr Malyutin was driving a car in the Bronx, NY, he was hit by another car that had purposefully rushed out from Aleksandr Malyutin's left side, failed to yield the right of way to Aleksandr Malyutin who was at that moment rightfully occupying an intersection and was almost done crossing it, and was actively accelerating up to the moment it hit the car Aleksandr Malyutin was driving. The impact was in the front driver's side of the car Aleksandr Malyutin was driving which became no longer drivable as a result of the impact. As of the moment of said collision, Aleksandr Malyutin was in a state of shock and thought that the accident was an attempt on his life either by Russian mafia or the state court defendants who had promised to wipe him out. *See supra* at paragraph 30, pages 15-16, and at paragraph 20, pages 10-11, respectively. Nationality of the driver who caused collision added to such suspicion of Aleksandr Malyutin. Said collision was a psychologically traumatic event for Aleksandr Malyutin causing aggravation of his pre-existing condition; it failed, however, to cause Aleksandr Malyutin any physi-

cal injuries and, therefore, he did not report any injuries in a Police Accident Report a copy of which he later personally obtained from the 49th Precinct in the Bronx, NY. (emphasis added).

38. By November 24, 2007, Aleksandr Malyutin had been constrained to spend at least 3,650 hours of his time, which he had never intended to do, learning from scratch how to, generally speaking, successfully litigate prosecuting his state court lawsuit in Law Division appearing *pro se*, researching and preparing his own motions with the state court and opposing motions of the state court defendants, conducting pre-trial discovery, participating in the court ordered mediation program, researching and gathering evidence, including with the help of New Jersey state police officers from Wyckoff Police Department, as part of his preparation for the coming trial, and otherwise working full-time on his meritorious state court lawsuit that had almost reached its trial stage then.

B. Defendants

39. Defendant Condoleezza Rice ("Defendant Rice") was, at all times relevant to this complaint, the Secretary of the DOS ("S"); the Immigration and Nationality Act charged S with the administration and enforcement of all laws relating to the powers, duties, and functions of diplomatic and consular officers of the United States. (emphasis added). At all times relevant to this complaint, (a) Defendant Rice supervised the administration of the US Immigration laws abroad, (b) Consular affairs were the responsibility of the DOS, (c) Defendant Rice had ultimate authority over operations of the DOS, (d) in that

capacity and through her agents Defendant Rice was authorized to deem aliens inadmissible to the United States, and (e) Defendant Rice was acting under color of Federal authority. Under the circumstantial evidence present in the instant matter, Defendant Rice was personally involved in, *inter alia*, (a) violation of Plaintiff's rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, (b) deprivation of the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled, and (c) class-based discrimination against Plaintiff on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey. Pursuant to 22 CFR 172.2(a), only the Executive Office of the Office of the Legal Adviser (L/EX) is authorized to receive and accept summonses and complaints sought to be served upon Defendant Rice, and, therefore, the official address of Defendant Rice for the purpose of serving a summons upon her is: Executive Office of the Office of the Legal Adviser (L/EX), United States Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520-6310. For the purpose of Rule 4(e)(2)(C) of the Federal Rules of Civil Procedure, the Executive Office of the Office of the Legal Adviser (L/EX) at the DOS is the agent of Defendant Rice authorized by law to receive service of process. Pursuant to 22 CFR 172.1(b), Defendant Rice is the DOS employee. Defendant Rice is sued in her individual capacity.

40. Defendant William Burns ("Defendant Burns") was, at all times relevant to this complaint, the US Ambassador to Russia and Chief of the US Mission in Mos-

cow, Russia; in that capacity Defendant Burns was in charge of the entire US diplomatic mission and supervised all of its activities; his authority encompassed the personnel of the DOS and he had full responsibility for the direction, coordination, and supervision of all the US Government executive branch employees in Russia. Under the circumstantial evidence present in the instant matter, Defendant Burns was personally involved in, *inter alia*, (a) violation of Plaintiff's rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, (b) deprivation of the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled, and (c) class-based discrimination against Plaintiff on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey. At all times relevant to this complaint, Defendant Burns was acting under color of Federal authority. Pursuant to 22 CFR 172.2(a), only the Executive Office of the Office of the Legal Adviser (L/EX) is authorized to receive and accept summonses and complaints sought to be served upon Defendant Burns, and, therefore, the official address of Defendant Burns for the purpose of serving a summons upon him is: Executive Office of the Office of the Legal Adviser (L/EX), United States Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520-6310. For the purpose of Rule 4(e)(2)(C) of the Federal Rules of Civil Procedure, the Executive Office of the Office of the Legal Adviser (L/EX) at the DOS is the agent of Defendant Burns authorized by law to receive service of process. Pursuant to 22 CFR 172.1(b), Defend-

ant Burns is the DOS employee. Defendant Burns is sued in his individual capacity.

41. Defendant Daniel Russell ("Defendant Russell") was, at all times relevant to this complaint, Deputy Chief of Mission at, and/or Charge d'Affaires ad interim of, the Embassy. In that capacity Defendant Russell (a) served as alter ego to the Chief of Mission, (b) was the second in command at the Embassy, (c) was the second-ranking official of the US Government in Russia, (d) served as the "Chief Operating Officer" of the Embassy, (e) was responsible for the management of the Embassy's day-to-day activities, and (f) as the Ambassador's deputy, he could substitute for the Chief of Mission, and speak for him, in all matters. Together with the Chief of Mission, Defendant Russell was responsible for and headed the mission's "country team" of the US Government personnel. Defendant Russell acted as Charge d'Affaires ad interim when the Chief of Mission was away. Under the circumstantial evidence present in the instant matter, Defendant Russell was personally involved in, *inter alia*, (a) violation of Plaintiff's rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, (b) deprivation of the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled, and (c) class-based discrimination against Plaintiff on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey. At all times relevant to this complaint, Defendant Russell was acting under color of Federal authority. Pursuant to 22 CFR 172.2(a), only the Executive Office of the Office of the Legal Adviser (L/EX) is authorized to receive and accept summonses

and complaints sought to be served upon Defendant Russell, and, therefore, the official address of Defendant Russell for the purpose of serving a summons upon him is: Executive Office of the Office of the Legal Adviser (L/EX), United States Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520-6310. For the purpose of Rule 4(e)(2)(C) of the Federal Rules of Civil Procedure, the Executive Office of the Office of the Legal Adviser (L/EX) at the DOS is the agent of Defendant Russell authorized by law to receive service of process. Pursuant to 22 CFR 172.1(b), Defendant Russell is the DOS employee. Defendant Russell is sued in his individual capacity.

42. Defendant unknown named white female ("Defendant #4) was, at all times relevant to this complaint, the US Consular officer at the Embassy. In that capacity Defendant #4 was authorized to adjudicate visa applications and to grant or deny entry visas to the United States. On November 29, 2007, Defendant #4 personally conducted Plaintiff's appointment at the Embassy in connection with (a) Plaintiff's November 27, 2007 request for access to court, *see infra* at paragraph 53, page 28, and (b) Plaintiff's November 27, 2007 application barcode #M1DQ124DCJ for a B1/B2 visa, *see infra* at paragraph 54, page 28. Under the direct and/or circumstantial evidence present in the instant matter, Defendant #4 was personally involved in, *inter alia*, (a) violation of Plaintiff's rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, (b) deprivation of the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled, and (c) class-based discrimination against Plaintiff on account of Plaintiff's exercise of his

fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey.[9] At all times relevant to this complaint, Defendant #4 was acting under color of Federal authority. Pursuant to 22 CFR 172.2(a), only the Executive Office of the Office of the Legal Adviser (L/EX) is authorized to receive and accept summonses and complaints sought to be served upon Defendant #4, and, therefore, the official address of Defendant #4 for the purpose of serving a summons upon her is: Executive Office of the Office of the Legal Adviser (L/EX), United States Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520-6310. For the purpose of Rule 4(e)(2)(C) of the Federal Rules of Civil Procedure, the Executive Office of the Office of the Legal Adviser (L/EX) at the DOS is the agent of Defendant #4 authorized by law to receive service of process. Pursuant to 22 CFR 172.1(b), Defendant #4 is the DOS employee. Defendant #4 is sued in her individual capacity.

43. Defendant unknown named white male ("Defendant #5") was, at all times relevant to this complaint, the US Consular officer at the Embassy. In that capacity Defendant #5 was authorized to adjudicate visa applications and to grant or deny entry visas to the United States. On February 5, 2008, Defendant #5 personally conducted Plaintiff's appointment at the Embassy in connection with (a) Plaintiff's January 24, 2008 request for access to court, *see infra* at paragraph 77, pages 41-42, and (b) Plaintiff's January 24, 2008 application barcode #E1FD1MSWW8 for a B1/B2 visa, *see infra* at paragraph 78, page 42. Under the direct and/or circumstantial evidence present in the instant matter, Defendant #5 was personally involved in, *inter alia*, (a) violation of

Plaintiff's rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, (b) deprivation of the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled, and (c) class-based discrimination against Plaintiff on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey. At all times relevant to this complaint, Defendant #5 was acting under color of Federal authority. Pursuant to 22 CFR 172.2(a), only the Executive Office of the Office of the Legal Adviser (L/EX) is authorized to receive and accept summonses and complaints sought to be served upon Defendant #5, and, therefore, the official address of Defendant #5 for the purpose of serving a summons upon him is: Executive Office of the Office of the Legal Adviser (L/EX), United States Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520-6310. For the purpose of Rule 4(e)(2)(C) of the Federal Rules of Civil Procedure, the Executive Office of the Office of the Legal Adviser (L/EX) at the DOS is the agent of Defendant #5 authorized by law to receive service of process. Pursuant to 22 CFR 172.1(b), Defendant #5 is the DOS employee. Defendant #5 is sued in his individual capacity.

44. Defendant Kurt Amend ("Defendant Amend") was, at all times relevant to this complaint, the US Consul General and Counselor for Consular Affairs at the Embassy. In that capacity Defendant Amend had oversight responsibilities over all consular activities of the Embassy and over Defendants #4 and #5. Under the circumstantial evidence present in the instant matter, Defendant Amend was personally involved in, *inter alia*, (a) vio-

lation of Plaintiff's rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, (b) deprivation of the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled, and (c) class-based discrimination against Plaintiff on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey. At all times relevant to this complaint, Defendant Amend was acting under color of Federal authority. Pursuant to 22 CFR 172.2(a), only the Executive Office of the Office of the Legal Adviser (L/EX) is authorized to receive and accept summonses and complaints sought to be served upon Defendant Amend, and, therefore, the official address of Defendant Amend for the purpose of serving a summons upon him is: Executive Office of the Office of the Legal Adviser (L/EX), United States Department of State, 2201 C Street, NW, Room 5519, Washington, DC 20520-6310. For the purpose of Rule 4(e)(2)(C) of the Federal Rules of Civil Procedure, the Executive Office of the Office of the Legal Adviser (L/EX) at the DOS is the agent of Defendant Amend authorized by law to receive service of process. Pursuant to 22 CFR 172.1(b), Defendant Amend is the DOS employee. Defendant Amend is sued in his individual capacity.

45. Plaintiff sues each and all Defendants in their individual capacities.

IV. STATUTE OF LIMITATIONS

46. Plaintiff's claims against Defendants are not time-barred and, therefore, such claims are actionable.

A. *Bivens* actions

47. The applicable statute of limitations in *Bivens* actions is the state personal injury statute. *Van Strum v. Lawn*, 940 F.2d 406, 410 (9th Cir.1991). *Bivens* actions are governed by the personal injury statute of limitations for the state in which the district sits. *Matthews v. Macanas*, 990 F.2d 467, 468 (9th Cir.1993). The court in *Hobson v. Wilson*, 737 F.2d 1, 32 n. 99 (D.C.Cir.1984), cert. denied, 470 US 1084 (1985) held that the District of Columbia's statute of limitations for *Bivens* actions is three years.

B. 42 USC 1985 claims

48. The Court in *Callwood v. Questel*, 883 F.2d 272 (3d Cir.1989) stated, *inter alia*, that "the Supreme Court has yet to make a definitive statement concerning the most analogous state limitations period for 42 USC Sec. 1985 claims concerning conspiracies to deny constitutional rights. We, however, spoke implicitly on the issue when, in *Pratt v. Thornburgh*, 807 F.2d 355 (3d Cir.1986), cert. denied, 484 US 839, 108 S.Ct. 125, 98 L.Ed.2d 83 (1987), we affirmed a district court decision holding that, after *Goodman v. Lukens Steel*, 482 US 656, 107 S.Ct. 2617, Sec. 1985 actions should also be controlled by the forum state's limitations period for personal injury claims. *Pratt v. Thornburgh*, 807 F.2d at 357." *See also Pratt v. Thornburgh*, 807 F.2d 355 (3d Cir.1986), cert. denied, 484 US 839, 108 S.Ct. 125, 98 L.Ed.2d 83 (1987) (personal injury statute of limitations governs Sec. 1985 claims). The applicable statute of limitations for actions brought pursuant to 42 USC Sec. 1985 is the District of Columbia

three-year statute of limitations governing personal injury actions. DC ST § 12-301.

C. 42 USC 1986 claims

49. The statute of limitations for actions brought pursuant to Sec. 1986 is one year. 42 USC 1986.

V. STATEMENT OF FACTS

50. Plaintiff hereby incorporates by reference paragraphs 1 through 49, inclusively, as if set forth in full herein.

51. On November 24, 2007, Plaintiff arrived at JFK to depart the United States for a short-term trip to Russia. Because the state court lawsuit was everything to him, *see supra* at paragraph 32, page 17, and to be on the safe side, Plaintiff decided to seek advice from one of agents of the DHS on duty at JFK to make sure he would be able to return to the United States in connection with the Docket #1. (emphasis added). Plaintiff then approached an unknown named white male agent of the DHS who was on duty at JFK and talked to him in presence of a witness for at least ten minutes. Plaintiff described his situation in connection with the Docket #1 providing certain details about his quest for justice in the United States, e.g. about his court recognized indigent status, the seriousness of situation in which he had been put by the state court defendants, etc. and asked the agent of the DHS whether Plaintiff should expect problems getting a new B1/B2 entry visa to the United States at the Embassy and returning to the United States in connection with the Docket #1. The agent of the DHS respond-

ed that he would be able to assist Plaintiff for that matter only after examining Plaintiff's passport. Plaintiff then produced his passport to the agent of the DHS who, after having examined it, including the history of Plaintiff's previous visits to the US contained therein, advised Plaintiff, *inter alia*, that under the then present circumstances Aleksandr Malyutin was not violating any immigration laws of the United States and that he would not have problems getting a new B1/B2 entry visa to the United States at the Embassy and returning to the United States in light of Plaintiff's extreme emergency situation beyond his control in connection with the state court litigation in the United States. Relying on such assurances of the agent of the DHS, Plaintiff left the United States.

52. Upon arrival to Russia and prior to November 27, 2007, Plaintiff sought medical help in connection with his condition and was repeatedly advised that his condition was a serious mental illness which required long-term treatment and expensive medication.

53. On November 27, 2007, Plaintiff exercised a number of rights guaranteed to him by the Constitution, Federal and State laws, and International Treaties of the United States, including but not limited to the fundamental right of access to court which requires, *inter alia*, having access upon request, and requested physical access in person to the state court by properly advising Defendants in writing that, *inter alia*, he needed to get back to the United States as soon as possible in connection with the Docket #1 where he was seeking justice as a *pro se* litigant (the "November 27, 2007 request for access to court"), and by properly serving such his written request

upon Defendants following procedures set by Defendants for that matter.

54. On November 27, 2007, Plaintiff also made his application, which was assigned barcode #M1DQ124DCJ, for a B1/B2 visa with Defendants advising Defendants, *inter alia*, that his mental disorder was not dangerous and that he was a *pro se* litigant in formal state court proceedings in the United States; on November 27, 2007 and in connection with Plaintiff's application barcode #M1DQ124DCJ, Defendants scheduled Plaintiff's appointment at the Embassy for December 11, 2007 advising Plaintiff that they were unable to reschedule such appointment for an earlier date except in extreme emergency situation. (emphasis added).

55. In connection with Plaintiff's November 27, 2007 request for access to court, Defendants had access to, generally speaking, certain computer system that contained, *inter alia*, personal information about Plaintiff as well as information about his previous visits to the United States properly entered there, for example, as described *supra* at paragraph 18, page 10, and at paragraph 22, page 12; under the circumstantial evidence present in the instant matter, Defendants considered, on an expedited basis, certain information about Plaintiff that was available to them from various sources in connection with Plaintiff's November 27, 2007 request for access to court, found that Plaintiff had an extreme emergency situation, and, upon reaching certain agreement among themselves, called Plaintiff on the phone and orally advised him that his appointment at the Embassy had been rescheduled for November 29, 2007 instead.

56. On November 29, 2007, Plaintiff arrived at the Embassy and talked to personally Defendant #4 in connection with (a) his November 27, 2007 request for access to court, *see supra* at paragraph 53, page 28, and (b) his November 27, 2007 application barcode #M1DQ124DCJ for a B1/B2 visa, *see supra* at paragraph 54, page 28.

57. In connection with Plaintiff's November 27, 2007 request for access to court that was sitting in front of her on her desk, Defendant #4 insisted, as if she were a party to the state court lawsuit or Honorable State Court Judge, that Plaintiff comment on his then pending litigation providing to her details on what exactly he had been doing in the United States during the course of discovery as well as what exactly Plaintiff still planned to do in the months to come and how much more additional time Plaintiff needed to complete his state court litigation in the United States. Plaintiff then advised Defendant #4 that, *inter alia*:

(a) Litigating *pro se* since January 2007, he was seeking justice in the state court and damages way in excess of $300,000 exercising rights guaranteed to him by NJSA 2A:15-1 which provided, in pertinent part, that "every person of full age and sound mind may prosecute... any action in any court, in person...", the due process clauses of the Fifth and Fourteenth Amendments, and the equal protection clause of the Fourteenth Amendment to the US Constitution, as well as by certain International Treaties binding on the United States; Plaintiff also produced to Defendant #4 a copy of discovery end date search results for the Docket #1 printed from the web site of the Superior Court of New Jersey, Law Division;

(b) Litigating and prosecuting his lawsuit *pro se* and in his person in the US was the only option available to him

to secure, guarantee, and exercise his fundamental rights protected by the US Constitution, including his right of access to court and right to a fair and objective trial;

(c) He was a self-employed person without means to retain a counsel and that he employed himself full-time as a legal counsel in connection with the formal judicial proceedings in the US without any compensation for legal services he was providing to himself;

(d) The state court defendants' actions taken against him had reduced him to poverty resulting in, *inter alia*, (a) Plaintiff turning to his friends and family for financial support that had never been a source of free money and had to be eventually repaid, (b) in his application with the state court for leave to proceed *in forma pauperis* granted by the state court, and (c) his inability to afford to retain a professional counsel;

(e) His material evidence in connection with the Docket #1 and certain property kept in the United States would be lost, damaged, or destroyed if he would not return to the United States within a reasonable period of time and that he had no other opportunity to perform a duty to preserve his material evidence and to preserve his property in the United States, but to personally return to the US within a reasonable period of time;

(f) He still had not been deposed by his adversaries and that he still planned to depose his adversaries anytime before the court set discovery end date of January 10, 2008 that was fast approaching;

(g) Due to the nature of the formal judicial proceedings, it was not his function to, and, therefore, he could not predict exactly how much more additional time would be needed to complete such proceedings;

(h) If he were to remain in Russia beyond a reasonable period of time, he would, under the then present circumstances, lose his meritorious state court lawsuit to his adversaries, who had admitted detriment caused to him, and his ability to recover exorbitant economic and non-economic damages caused to him by the state court defendants;

(i) He had certain mental illness and that such mental disorder was not dangerous and that he was a person of sound mind and judgment who had never posed threat to his own property, safety, or welfare or that of others; and

(j) His state court lawsuit had reached its trial stage; in this connection, Plaintiff produced to Defendant #4 an original of the Legal Notice, *see supra* at paragraph 24, pages 13-14, that she thoroughly read.

58. Defendant #4 then asked Plaintiff to stop talking and wait certain period of time because, as she advised Plaintiff, she needed to confer with somebody; Defendant #4 was obviously in need of some authorization for taking further actions against mentally ill Plaintiff in connection with his November 27, 2007 request for access to court. Although Defendant #4 never advised Plaintiff as to whom exactly she went to confer with, Plaintiff submits that under the circumstances it could be constructively inferred, and any reasonable person would have come to the same conclusion, that she went to confer with her superior, Defendant Amend.

59. When, after at least five minutes, Defendant #4 returned, upon having conferred with somebody, presumably with her superior, Defendant Amend, she was wearing, figuratively speaking, the mantle of the State Court Judge that made her look ugly because it was clearly not her function. (emphasis added). Visibly resolved this time

and harboring invidiously discriminatory animus towards mentally ill Plaintiff, Defendant #4, acting under color of Federal authority, then started to perform functions of the State Court Judge in connection with Plaintiff's November 27, 2007 request for access to court and, *inter alia*:

(a) Advised Plaintiff that he may not further prosecute his state court lawsuit in the United States in his person and appearing *pro se*;

(b) Advised Plaintiff that from that moment on he had to retain a professional counsel to further prosecute his state court lawsuit in the United States;

(c) Advised Plaintiff that he and the state court had made a big mistake, respectively, filing an application to proceed *in forma pauperis* and granting such application, because thereby Plaintiff and the state court made American taxpayers "pay for your motions";

(d) Made humiliating, discriminatory, and highly disturbing to Plaintiff remarks about Plaintiff's alleged mental incapacity to proceed *pro se* inferring, *inter alia*, that Plaintiff had been simply sitting on his "friend's couch in the Bronx" doing nothing during all the time that Plaintiff had spent in the United States in connection with his state court lawsuit there;

(e) Made sarcastic, discriminatory, and highly disturbing to Plaintiff remarks about Plaintiff's financial situation in connection with his quest for justice in the United States asking him in a humiliating tone: "So you cannot afford to pay thirty something dollars for your motions?!" In this connection, Plaintiff submits to this Court that to him it equated to: "You want justice, yet you do not have thirty something dollars to buy it?!" (emphasis added);

(f) Advised Plaintiff that he would have to be deposed in Russia and that he, in his turn, would have to think of some way to depose the state court defendants either in, or from Russia, as if there were no such authority as the US Department of State's "Holy Book", the Foreign Affairs Manual ("FAM") which said, in pertinent parts, that "Consular officers should be ... familiar with the provisions of local law regarding depositions" and that "Depositions Not Permitted" in the "Russian Federation". 7 FAM 921. (emphasis added; bold type as in 7 FAM 921);

(g) Advised Plaintiff that he may not participate in the trial in the United States in his person and appearing *pro se* and that Plaintiff would have to retain a professional counsel for that matter; and

(h) Addressing Plaintiff's concern as per paragraph 57(e), pages 30-31 *supra*, advised Plaintiff that he may not perform his duty to preserve his material evidence or property he had in the United States by going there personally.

60. Defendant #4 then, figuratively speaking, dropped the mantle of the State Court Judge; in connection with Plaintiff's November 27, 2007 application barcode #M1DQ124DCJ for a B1/B2 visa and continuing to act under color of Federal authority and without conferring with anybody else, she performed a discretionary act within the scope of her authority and official responsibilities by advising Plaintiff that she would not grant him a B1/B2 entry visa to the US because for purposes of INA 214(b) she presumed Plaintiff to be an immigrant whose ties to Russia were not strong enough.

61. Plaintiff then advised Defendant #4, and asked her to advise Defendants accordingly, that unless Defendants immediately rectify the situation created by their

conspiratorial actions against him, he would immediately prepare and file a lawsuit against Defendants seeking appropriate relief because such Defendants' actions posed real threat to his safety, welfare, and property, violated his clearly established constitutional rights, and were motivated by intent to deprive Plaintiff of the equal protection of the laws and the equal privileges under the laws, to which he was entitled, on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey (the "November 29, 2007 legal warning"). (emphasis added).

62. Defendant #4 then immediately lost any interest to further continue conversation with the mentally ill Plaintiff both in connection with his November 27, 2007 request for access to court and his November 27, 2007 application for a B1/B2 visa. Prior to the moment she took off from her chair and left, Defendant #4 silently gave Plaintiff back his passport together with certain other documents that included a letter from the Embassy advising Plaintiff that everything that had just happened at the Embassy was not appealable and that, therefore, Plaintiff could not start a process of a timely and fair appeal and redress for that matter.

63. As a result of, *inter alia*, the November 29, 2007 conspiratorial actions taken by Defendants against him at the Embassy, Plaintiff could no longer prosecute his state court lawsuit, and bring it to trial, in the United States in his person appearing *pro se*.

64. Starting from November 29, 2007, Plaintiff was compelled to oppose numerous motions to dismiss instead and to file his own otherwise needless motions with the state court. Plaintiff suffered anxiety, rage, extreme

terror, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, mental suffering, and humiliation resulting in aggravation of his pre-existing condition. Plaintiff dreaded to think that, as a result of conspiratorial actions taken by Defendants against him, he could lose everything he had achieved prosecuting his state court lawsuit. (emphasis added). It would mean that all of his efforts and sufferings were in vain; Plaintiff repeatedly experienced severe emotional stress that lasted for certain period of time and that caused aggravation of his pre-existing condition.

65. As a result of the November 29, 2007 conspiratorial actions taken by Defendants against him at the Embassy, Plaintiff got an extremely distressful, painful, and terrifying feeling, which was intensified by the fact that Defendants were acting under color of Federal authority, that, *inter alia*:

(a) Justice in the United States was for sale;

(b) Person's eligibility to seek justice in courts in the United States directly depended on such person's ability to retain a professional counsel;

(c) Person could not reasonably expect to be eligible to seek justice in courts in the United States if such person could not afford to pay "thirty something dollars" to make a motion; and

(d) Any mentally ill person, even if such person was a litigant in formal judicial proceedings, could be denied enjoyment of fundamental civil rights and access to court and to justice in the United States because of such person's mental illness and in violation of, *inter alia*, NJSA 30:4-24.1 which provided, in pertinent part, that "every

individual who is mentally ill shall be entitled to fundamental civil rights..."

66. On December 4, 2007 and following his November 29, 2007 legal warning, Plaintiff forwarded his written legal warning letter clearly designated "Re: Legal Warning" (the "December 4, 2007 legal warning") to:

(a) Defendant Rice via FedEx (FedEx Tracking No. 861505744659; delivered on December 6, 2007 to the Central Mail Room B-528 at the DOS in Washington, DC where it was accepted and signed for by Harold Harrison, an employee of the Diplomatic Pouch and Mail Division that provided mail services to the DOS, surveyed the flow of mail in the system, managed mail processing system, which segregated mail by type and sorted and delivered it to its final destination); and

(b) Defendant Burns, Defendant Russell, Defendant Amend, Defendant #4, and Defendant #5 via registered mail, return receipt requested (Russian Post Tracking No. 45822; delivered on December 11, 2007 to a representative of the Embassy).

67. The November 29, 2007 and December 4, 2007 legal warnings were proper notices to Defendants that Plaintiff, *inter alia*, would institute a lawsuit against them unless they took immediate action to fully and completely resolve the situation created by Defendants' conspiratorial actions taken against Plaintiff; in his December 4, 2007 legal warning, Plaintiff set a deadline of December 22, 2007 for Defendants to resolve such situation. Plaintiff advised Defendants, *inter alia*, that if they sought to prevent him from taking further steps to protect himself then Defendants needed to contact Plaintiff as soon as possible, whether by mail, email or telephone and to ex-

plain that situation. Plaintiff further advised Defendants that their actions may be found in contempt of court.

68. In his December 4, 2007 legal warning, Plaintiff, among other things, repeatedly requested, and Defendants repeatedly denied to him:

(a) Physical access to the state court in connection with the Docket #1; and

(b) B1/B2 entry visa to the United States.

69. Under the circumstantial evidence present in the instant matter and upon being properly served with both the November 29, 2007 and December 4, 2007 legal warnings, Defendants reached certain agreement among themselves to not respond to, or contact Plaintiff in connection with such legal warnings; Defendants never withdrew from their conspiracy against Plaintiff by taking affirmative steps to terminate or abandon their participation in it.

70. The November 29, 2007 and December 4, 2007 legal warnings were sufficient and reasonable notices to Defendants of the imminent personal or official capacity litigation against them either in foreign or US courts. In this connection:

(a) 7 FAM 971.1(c) unequivocally instructed the Embassy and, therefore, at least Defendant Burns, Defendant Russell, Defendant Amend, and Defendant #4 to "notify the Department (L/DL), by telegram at once of the potential litigation";

(b) 2 FAM 284.3(a) unequivocally instructed the Embassy and, therefore, at least Defendant Burns, Defendant Russell, Defendant Amend, and Defendant #4 that "the Department... should be promptly informed of... imminent litigation against the United States with such details as to... nature of suit as may be available, and

such recommendations as the post may wish to have considered in respect of its particular local situation. Information regarding the nature of the suit should include a detailed report on both the facts of the case and the issues that... are expected to be raised in the litigation by any party to the case. The post should initially report... imminent litigation by telegram... The post's telegraphic report should be followed by a more detailed report... Copies of all pertinent documents should be forwarded to the Department with the post's airgram";

(c) 2 FAM 226(a) unequivocally instructed the Embassy and, therefore, at least Defendant Burns, Defendant Russell, Defendant Amend, and Defendant #4 that "each post shall inform the Department of any litigation in a local court in which a US citizen employee may become involved in employee's private capacity. The post's report should be in the form prescribed in 2 FAM 280 for reporting suits against the United States..." and

(d) 2 FAM 226(b) unequivocally instructed, at least, Defendant Burns, Defendant Russell, and Defendant Amend that they were "responsible for reporting to their posts of assignment litigation in foreign courts in which they may become involved."

71. In light of the foregoing, Defendant Rice was constructively notified, in addition to the November 29, 2007 and December 4, 2007 legal warnings, by, at least, Defendant Burns, Defendant Russell, Defendant Amend, and Defendant #4, via certain official channels, about the imminent litigation against Defendants by Plaintiff and was provided for that matter with a detailed report on facts and issues that were expected to be raised in such litigation, as unequivocally prescribed by, *inter alia*, pertinent parts of 7 FAM 971.1(c), 2 FAM 284.3(a), 2 FAM

226(a), and 2 FAM 226(b). Under the circumstantial evidence, Defendants, upon reaching certain agreement among themselves, chose to ignore Plaintiff's legal warnings altogether and to further their conspiracy against Plaintiff. Additionally, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had actual and/or constructive knowledge that Defendant #4 was engaged in conduct that posed an unreasonable risk of constitutional injury to Plaintiff, yet they chose to facilitate, approve, condone, and/or turn a blind eye on such illegal conduct after learning of it and to act with a conscious disregard for the risk of constitutional injury to Plaintiff. None of Defendants withdrew from their conspiracy by taking affirmative steps to terminate or abandon his or her participation in it.

72. In light of the facts set forth *supra*:

(a) On or shortly before November 29, 2007, Defendants reached certain agreement among themselves and conspired against Plaintiff for, at least, the first time;

(b) Shortly after the November 29, 2007 legal warning Defendants reached certain agreement among themselves and conspired against Plaintiff for, at least, the second time; and

(c) Shortly after the December 4, 2007 legal warning Defendants reached certain agreement among themselves and conspired against Plaintiff for, at least, the third time.

73. The situation that Plaintiff found himself in, as a result of Defendants' conspiracy against him, was a psychologically traumatic event that came out of the blue for Plaintiff; it was totally the opposite as compared with assurances of the agent of the DHS at JFK, who had also been acting under color of Federal authority, *see supra*

at paragraph 51, pages 27-28, and relying on which Plaintiff had acted to his detriment.

74. Plaintiff then notified the state court defendants about his problems returning to the United States. The state court defendants immediately decided to use Defendants' illegal interference with the due course of justice in the state court proceedings and Defendants' conspiracy against Plaintiff to their advantage in light of Plaintiff's inability to appear in person in Hackensack, NJ for his deposition upon oral examination, to further prosecute his case and bring it to trial in person in the United States; in the very end of December 2007, the state court defendants urgently filed their joint motion to dismiss Plaintiff's *pro se* complaint against them returnable on January 18, 2008.

75. Because of Defendants' conspiracy against him, Plaintiff was constrained to incur, to his detriment, additional and otherwise needless expenses to oppose the state court defendants' motions to dismiss that were based solely upon Plaintiff's inability to return to the United States due to Defendants' conspiracy against him, and to make his own otherwise needless motions with the state court, including but not limited to his motion for a protective order, by spending his time to research and properly prepare motion papers for the state court and by mailing his letter briefs and certifications from Moscow, Russia to the United States via FedEx in light of extreme time sensitivity of certain matters. (emphasis added).

76. On January 18, 2008, Hon. Menelaos W. Toskos, J.S.C. heard a motion to dismiss filed jointly by the state court defendants and opposed by Plaintiff and denied it in its entirety; in his January 18, 2008 order (the "Janu-

ary 18, 2008 order") and in light of, *inter alia*, extraordinary circumstances created by Defendants, Hon. Menelaos W. Toskos, J.S.C. extended pre-trial discovery by ninety days from January 10, 2008 to April 9, 2008 and compelled Plaintiff to appear in person in the United States in Hackensack, NJ for his deposition upon oral examination anytime before February 29, 2008 at the law offices of one of the most prominent law firms in the Mid-Atlantic region.

77. On January 24, 2008 and in connection with the January 18, 2008 order, Plaintiff repeatedly exercised a number of rights guaranteed to him by the US Constitution, Federal and State laws, as well as by International Treaties binding on the US, including but not limited to the fundamental right of access to court which requires, *inter alia*, having access upon request and which had already been denied to Plaintiff twice, on November 29, 2007 and on or before December 22, 2007, *see supra*, by Defendants performing functions of State Court Judges, and repeatedly requested physical access in person to the state court by properly advising Defendants in writing that, *inter alia*, he needed to get back to the US as soon as possible in connection with the Docket #1, where he was still seeking justice as a *pro se* litigant, and the urgent need to perform his duties under the January 18, 2008 order a copy of which was attached thereto (the "January 24, 2008 request for access to court"), and by properly serving such his written request upon Defendants following procedures set by Defendants for that matter.

78. On January 24, 2008 and in connection with the January 18, 2008 order, Plaintiff also made his application, which was assigned barcode #E1FD1MSWW8, for

a B1/B2 visa with Defendants properly reminding them, *inter alia*, that his mental disorder was not dangerous and that he was a *pro se* litigant in the formal judicial proceedings in the United States. On January 24, 2008 and in connection with his application barcode #E1FD1MSWW8, Defendants scheduled Plaintiff's appointment at the Embassy for February 5, 2008 advising Plaintiff that they were unable to reschedule such appointment for an earlier date except in extreme emergency situation. Under the circumstantial evidence present in the instant matter, Defendants repeatedly reached certain agreement among themselves and refused to reschedule Plaintiff's appointment at the Embassy for an earlier date despite Plaintiff's written request for that matter in connection with the urgent need to perform his duties under the January 18, 2008 order.

79. Therefore, on or shortly after January 24, 2008, Defendants reached certain agreement among themselves and conspired against Plaintiff for, at least, the fourth time; this time Defendants' motivation included, *inter alia*, intent to obstruct the January 18, 2008 order.

80. On February 5, 2008, Plaintiff arrived at the Embassy and saw Defendant #4 and Defendant #5 sitting next to each other interviewing and performing biometric finger scanning of visa applicants. Being aware of the fact that Defendant #4 was a member of Defendants' conspiracy against him, Plaintiff was afraid to talk to her once again. Plaintiff then talked to personally Defendant #5 in connection with (a) his January 24, 2008 request for access to court, *see supra* at paragraph 77, pages 41-42, and (b) his January 24, 2008 application barcode #E1FD1MSWW8 for a B1/B2 visa, *see supra* at paragraph 78, page 42.

81. In connection with Plaintiff's January 24, 2008 request for access to court, Defendant #5 insisted, as if he were a party to the state court lawsuit or Honorable State Court Judge, that Plaintiff provide details about his litigation in the United States; Plaintiff then repeatedly reminded, *inter alia*, that pursuant to NJSA 2A:15-1 he was a *pro se* litigant in the formal judicial proceedings without means to retain a professional counsel and that pursuant to the January 18, 2008 order he had been compelled by Hon. Menelaos W. Toskos, J.S.C. to appear in person in the US on or before February 29, 2008 otherwise Plaintiff would lose his meritorious state court case to his adversaries and his ability to recover his economic and non-economic damages way in excess of $300,000 and that Plaintiff had already forwarded his legal warnings to Defendants in connection with Defendants' violation of his rights guaranteed to him by the due process clauses of the Fifth and Fourteenth Amendments and by the equal protection clause of the Fourteenth Amendment to the US Constitution and that Plaintiff had certain mental illness which was not dangerous, however. Defendant #5 then asked Plaintiff to stop talking; being obviously in need of some authorization for taking further actions against Plaintiff in connection with his January 24, 2008 request for access to court, Defendant #5 asked Plaintiff to take a seat and wait. Meanwhile, Defendant #5 conferred with Defendant #4 for at least ten minutes which Plaintiff witnessed personally. During that time Plaintiff witnessed that Defendant #5 started to confer with Defendant #4, then waited for Defendant #4 while she was conferring with somebody else, and then resumed conferring with Defendant #4; Plaintiff could not hear Defendants #4 and #5 speaking;

rather, he saw them speaking and that meanwhile they once looked at Plaintiff and smiled ironically. In this connection, Plaintiff submits to this Court that to him that smile of Defendants #4 and #5 looked like as if they were saying to each other at that specific moment of time: "Look, here is this mentally ill Russian again!" (emphasis added).

82. After Defendant #5 was done conferring as described *supra* at paragraph 81, he waved his hand at Plaintiff asking him to come up. Plaintiff came closer and saw that Defendant #5 was also, just like Defendant #4 previously, wearing, figuratively speaking, the mantle of the State Court Judge which did not fit him because it was not his function either. (emphasis added). Unlike Defendant #4 previously, Defendant #5, after having conferred as described *supra* at paragraph 81, was a man of few words. Visibly resolved this time, acting under color of Federal authority and harboring invidiously discriminatory animus towards mentally ill Plaintiff, and addressing Plaintiff's January 24, 2008 request for access to court that was sitting in front of him on his desk, Defendant #5 squarely advised Plaintiff, *inter alia*, that he, Plaintiff, may not further participate in the state court lawsuit in the Unites States in his person and appearing *pro se*.

83. Defendant #5 then, figuratively speaking, dropped the mantle of the State Court Judge; in connection with Plaintiff's January 24, 2008 application barcode #E1FD1MSWW8 for a B1/B2 visa, continuing to act under color of Federal authority, and without conferring with anybody else, he performed a discretionary act within the scope of his official responsibilities and authority by advising Plaintiff that he would not grant him a

B1/B2 entry visa to the US because for purposes of INA 214(b) he presumed Plaintiff to be an immigrant whose ties to Russia were not strong enough.

84. Defendant #5 then silently gave Plaintiff back his passport together with enclosed January 24, 2008 request for access to court which included, *inter alia*, a copy of the January 18, 2008 order. Plaintiff took it all, pulled out a copy of the January 18, 2008 order, placed it in front of Defendant #5, and squarely asked Defendant #5: "Did you see the court order?" Being visibly nervous at that specific moment of time, Defendant #5 laconically responded, looking at a copy of the January 18, 2008 order, with "we saw it." (emphasis added). In this connection, Plaintiff submits to this Court that such response left Plaintiff speechless for a moment; Plaintiff momentarily thought that the January 18, 2008 order of the American court, entered by the American judge, was nothing more than a piece of meaningless, contemptible, and worthless paper to Defendants who were above all those courts, court judges and their orders, and the entire American judicial system because Defendants were some kind of "Ultimate Judges" themselves. (emphasis added).

85. Plaintiff then made an attempt to pull himself together; he then advised Defendant #5, asking him to advise Defendants accordingly, that unless Defendants immediately rectify the situation created by all their conspiratorial actions taken against Plaintiff, he would immediately prepare and file a lawsuit against Defendants seeking appropriate relief because such actions posed real threat to his safety, welfare, and property, violated his clearly established constitutional rights, and were motivated by intent to deprive Plaintiff of the equal pro-

tection of the laws and the equal privileges under the laws, to which Plaintiff was entitled, on account of Plaintiff's exercise of his fundamental rights being a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey (the "February 5, 2008 legal warning"). (emphasis added). Plaintiff then left the Embassy terrorized, devastated, helpless, and disgusted at such Defendants' outrageous and egregious pattern of conduct. (emphasis added).

86. As a result of the February 5, 2008 conspiratorial actions taken by Defendants against him at the Embassy, Plaintiff suffered anxiety, rage, extreme terror, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, and mental suffering resulting in aggravation of his pre-existing condition; Plaintiff repeatedly dreaded to think that he could lose everything he had achieved prosecuting his state court case. It would mean that all of his previous efforts and sufferings were in vain. Defendants' obvious conspiracy against him, that was being intentionally, willfully, and routinely furthered by Defendants, caused Plaintiff to repeatedly experience severe emotional stress that lasted for certain period of time thereafter and that caused aggravation of his pre-existing condition.

87. On February 15, 2008 and following the February 5, 2008 legal warning, Plaintiff forwarded to Defendants via facsimile and email his written legal warning letter (the "February 15, 2008 legal warning") repeatedly advising Defendants about the fact that their actions taken against Plaintiff clearly violated, *inter alia*, Plaintiff's rights guaranteed to him by the due process clause of the Fifth Amendment to the US Constitution, and about a

possibility of a legal action against Defendants. Plaintiff further advised Defendants that the court may apply strict scrutiny against them and that Plaintiff then may enjoy a presumption of innocence and that the burden of proof may then shift to Defendants to show that they were pursuing a compelling objective, while there was none, and that the means Defendants chose were "necessary" to achieve that objective, while such means were unnecessarily restrictive and unconstitutional. Defendants confirmed receipt of the February 15, 2008 legal warning via return email sent to Plaintiff. Defendants then had yet another opportunity to withdraw from their conspiracy against Plaintiff by taking affirmative steps to terminate or abandon their participation in it; Defendants, however, refused to use such an opportunity.

88. Under the circumstantial evidence present in the instant matter and upon being properly served with both the February 5, 2008 and February 15, 2008 legal warnings, Defendants reached certain agreement among themselves to not respond to, or contact Plaintiff in connection with, such legal warnings; Defendants never withdrew from their conspiracy against Plaintiff by taking affirmative steps to terminate or abandon their participation in it.

89. The February 5, 2008 and February 15, 2008 legal warnings, that followed the November 29, 2007 and December 4, 2007 legal warnings, were sufficient, reasonable, and repeated notices to Defendants of the imminent personal or official capacity litigation against them either in foreign or US courts. In this connection:

(a) 7 FAM 971.1(c) unequivocally instructed the Embassy and, therefore, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #4, and Defendant

#5 to "notify the Department (L/DL), by telegram at once of the potential litigation";

(b) 2 FAM 284.3(a) unequivocally instructed the Embassy and, therefore, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #4, and Defendant #5 that "the Department... should be promptly informed of... imminent litigation against the United States with such details as to... nature of suit as may be available, and such recommendations as the post may wish to have considered in respect of its particular local situation. Information regarding the nature of the suit should include a detailed report on both the facts of the case and the issues that... are expected to be raised in the litigation by any party to the case. The post should initially report... imminent litigation by telegram... The post's telegraphic report should be followed by a more detailed report... Copies of all pertinent documents should be forwarded to the Department with the post's airgram";

(c) 2 FAM 226(a) unequivocally instructed the Embassy and, therefore, Defendant Burns, Defendant Russell, Defendant Amend, Defendant #4, and Defendant #5 that "each post shall inform the Department of any litigation in a local court in which a US citizen employee may become involved in employee's private capacity. The post's report should be in the form prescribed in 2 FAM 280 for reporting suits against the United States..." and

(d) 2 FAM 226(b) unequivocally instructed, at least, Defendant Burns, Defendant Russell, and Defendant Amend that they were "responsible for reporting to their posts of assignment litigation in foreign courts in which they may become involved."

90. In light of the foregoing, Defendant Rice was constructively notified, in addition to the November 29, 2007,

December 4, 2007, February 5, 2008, and February 15, 2008 legal warnings, by Defendant Burns, Defendant Russell, Defendant Amend, Defendant #4, and Defendant #5, via certain official channels, about the imminent litigation against Defendants by Plaintiff and was repeatedly provided for that matter with a detailed report on facts and issues that were expected to be raised in such litigation, as unequivocally prescribed by, *inter alia*, pertinent parts of 7 FAM 971.1(c), 2 FAM 284.3(a), 2 FAM 226(a), and 2 FAM 226(b). Under the circumstantial evidence, upon reaching certain agreement among themselves, Defendants chose to ignore all Plaintiff's legal warnings altogether and to further their conspiracy against Plaintiff. Additionally, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had actual and/or constructive knowledge that Defendants #4 and #5 were engaged in conduct that posed an unreasonable risk of constitutional injury to Plaintiff, yet Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend chose to facilitate, approve, condone, and/or turn a blind eye on such illegal conduct after learning of it and to act with a conscious disregard for the risk of constitutional injury to Plaintiff. None of Defendants withdrew from their conspiracy against Plaintiff by taking affirmative steps to terminate or abandon his or her participation in it.

91. In light of the facts set forth *supra*:

(a) On February 5, 2008, Defendants reached certain agreement among themselves and conspired against Plaintiff for, at least, the fifth time;

(b) Shortly after the February 5, 2008 legal warning Defendants reached certain agreement among them-

selves and conspired against Plaintiff for, at least, the sixth time; and

(c) Shortly after the February 15, 2008 legal warning Defendants reached certain agreement among themselves and conspired against Plaintiff for, at least, the seventh time.

92. Plaintiff then repeatedly advised the state court defendants about problems beyond his control that he was still experiencing returning to the United States due to continuing illegal interference by Defendants with the due course of justice in the state court lawsuit, Defendants' conspiracy against Plaintiff, and Defendants' obstruction of the January 18, 2008 order; the state court defendants repeatedly used such Defendants' illegal interference and conspiracy to their advantage and filed another motion to dismiss based on Plaintiff's failure to attend his deposition in Hackensack, NJ compelled by the January 18, 2008 order. That motion to dismiss was originally returnable on March 14, 2008, but the state court later adjourned it, on its own initiative, to March 28, 2008 instead so that it could be heard in conjunction with Plaintiff's motion for a protective order that Plaintiff made with the state court praying for appropriate relief in light of Defendants' illegal interference and that was returnable on March 28, 2008. In their submissions to the state court, the state court defendants averred, *inter alia*, that under the then present circumstances the state court had to release them from the lawsuit unpunished, despite the detriment caused by them to Plaintiff that they had previously admitted, and that Plaintiff had to file a lawsuit against Defendants instead.

93. Defendants, who were agents / officers / employees of the US Government and who were acting under color

of Federal authority, eventually overpowered the state court judge with his January 18, 2008 order, the state court, and the due course of justice therein. Apparently, the state court had no jurisdiction and/or authority over Defendants and their conspiratorial actions taken against Plaintiff and against his state court lawsuit. On March 28, 2008, Hon. Menelaos W. Toskos, J.S.C. heard the state court defendants' motion to dismiss opposed by Plaintiff together with Plaintiff's motion for a protective order. In light of extraordinary circumstances created by Defendants, motion to dismiss was granted and the March 28, 2008 order was entered dismissing Plaintiff's *pro se* complaint against one of the state court defendants based on Plaintiff's inability to appear in person in the US for his deposition compelled by the January 18, 2008 order; Plaintiff's motion for a protective order was denied.

94. On May 23, 2008, remaining state court defendant moved the state court to dismiss based on Plaintiff's failure to attend his deposition in Hackensack, NJ compelled by the January 18, 2008 order; Plaintiff opposed. On May 23, 2008, the state court entered its order dismissing Plaintiff's *pro se* complaint against the remaining state court defendant.

95. Instituted in January 2007, Plaintiff's meritorious state court lawsuit was dismissed and completely removed from the state court's docket on May 23, 2008 due to Plaintiff's inability to return to the United States which was a direct and immediate result of Defendants' interference with the state court lawsuit and Defendants' conspiracy against Plaintiff, all as described *supra*.

96. Under the circumstantial evidence present in the instant matter, between February 15, 2008 and May 23,

2008, Defendants reached certain agreement among themselves and conspired against Plaintiff for, at least, the eighth time; Defendants had plenty of opportunity to stop violating Plaintiff's fundamental right of access to court.

97. Plaintiff's material evidence in connection with his state court lawsuit and certain property in the United States was lost, damaged, or destroyed as a result of Defendants' conspiracy against Plaintiff and Defendants' interference with the due course of justice in the state court lawsuit.

98. The following is just one example of how Plaintiff has been injured in his property by Defendants' conspiracy against him. Plaintiff left his car parked on a street with no alternate side parking regulations in the Bronx, NY where it could be legally parked for months and, at any rate, during the time that Plaintiff planned to spend in Russia. Forced by Defendants to remain in Russia against his will and to his detriment, Plaintiff could not renew his inspection and registration from Moscow when it eventually became due; the car got ticketed nine times and in excess of $1,150 and got towed away by NYC Sheriff and recycled or auctioned off. This would never happen if Plaintiff returned to the United States within a reasonable period of time; this could be prevented only if Plaintiff returned to the United States personally and within a reasonable period of time. The car, as described in this paragraph, was also a piece of Plaintiff's material evidence in connection with the Docket #1.

99. Plaintiff used to store all of his material evidence in connection with his state court lawsuit in an apartment in the Bronx, NY. Because of the then pending state court lawsuit, Plaintiff planned to return to the United States

within a reasonable period of time. In light of the fact that Defendants eventually forced Plaintiff to remain in Russia against his will and to his detriment, that apartment could not wait forever for Plaintiff's return and was rented to somebody; Plaintiff's material evidence was disposed of. This would never happen if Plaintiff returned to the United States within a reasonable period of time; this could be prevented only if Plaintiff returned to the United States personally and within a reasonable period of time.

100. Although it was never a prerequisite for institution of the instant lawsuit against Defendants, Plaintiff made an attempt, a very burdensome one for him, to mitigate his damages in connection with Defendants' conspiracy against him by trying to appeal the dismissal of his state court lawsuit. (emphasis added). Plaintiff properly prepared and filed, on May 6, 2008, his otherwise needless appeal with the Superior Court of New Jersey, Appellate Division despite the fact that it looked more like a drowning man's catching at a straw. (emphasis added). Appellate Division assigned that case Docket No. A-4305-07T1 (the "Docket #2") and advised Plaintiff that the Docket #2 would be subject to dismissal if a transcript would not be filed within 35 days. Plaintiff made his motion with Appellate Division for a transcript to be provided to him at public expense because, *inter alia*, he was indigent and absolutely destitute and neither of acceptable forms of payment for a transcript, i.e. by personal check or money order, was physically available to Plaintiff from Moscow, Russia where he was forced to remain by Defendants against his will and to his detriment. On July 11, 2008, Appellate Division advised Plaintiff via UPS that he would have to pay for a tran-

script either by personal check or money order. Without a transcript Plaintiff could not proceed with his appeal. If not for Defendants' conspiracy that was being willfully and persistently furthered by them against him, on or around July 11, 2008 Plaintiff still had an opportunity to return to the US and to try to comply with Appellate Division's requirements to proceed with his appeal.

101. After Defendants forced Plaintiff to remain in Russia against his will and to his detriment, the state court defendants and the state court started to forward all correspondence addressed to Plaintiff to his Moscow address, either via registered mail, return receipt requested, or via commercial couriers such as UPS.

102. Up to the date of the instant complaint, Defendants have never made a single reasonable attempt to rectify, while it was still possible to, the situation they created as a result of their conspiracy against Plaintiff. Defendants eventually caused Plaintiff's worst nightmares to come true. (emphasis added). Now that the state court lawsuit has been dismissed and removed from the court's docket, Plaintiff's material evidence has been lost, damaged, or destroyed, and Plaintiff's right to appeal has been defeated, Plaintiff's remedy is damages only.

103. Plaintiff does not base any of his claims against Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend on the doctrine of respondeat superior. Under the facts presented *supra*, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend were personally involved because they failed to remedy the violation after learning of it, allowed the custom or policy fostering the violation to continue after learning of it, were grossly negligent in supervising their subordinates who caused the violation, failed to act on

information indicating that unconstitutional acts were occurring, failed to discipline Defendants #4 and #5 despite the fact that Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had such authority, and were affirmatively linked to violation of constitutional rights and deprivation of the equal protection of the laws and the equal privileges under the laws, to which Plaintiff was entitled, because Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend took no action against Defendants #4 and #5.

104. Personal involvement by Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend is properly alleged *supra* because (a) Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had knowledge, actual and/or constructive, that Defendants #4 and #5 were engaged in conduct that posed an unreasonable risk of constitutional injury to Plaintiff, (b) response of Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the offensive practices, (c) there was an affirmative causal link between inaction of Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend and the particular constitutional injury suffered by Plaintiff, and (d) Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend acquiesced in the unconstitutional behavior and tolerated past and ongoing misbehavior of Defendants #4 and #5 against Plaintiff.

105. Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend failed to avoid individual liability because they failed to oversee Defendants #4 and #5 in a manner that was not deliberately indifferent

to, *inter alia*, Plaintiff's constitutional rights; Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend were persons in the decision making chain whose deliberate indifference permitted the constitutional abuses to continue unchecked. Several times Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend were placed by Plaintiff on notice of a danger and chose to ignore the danger notwithstanding such notices.

106. According to his April 9, 2008 interview given to and published by "Komsomolskaya Pravda", one of the most popular Russian newspapers, Defendant Amend publicly admitted that, *inter alia*, each visa denial was being reviewed by additional consular official at the Embassy and that from time to time Defendant Amend was also reviewing such visa denials and that several times Defendant Amend found such denials unjustified and that then Defendant Amend used to call such visa applicants himself advising them that they could return to the Embassy and collect their visa. Just like Defendant Rice, Defendant Burns, and Defendant Russell, Defendant Amend had authority to prevent clearly illegal acts taken by Defendants #4 and #5 against Plaintiff, yet he chose to facilitate, approve, condone, and/or turn a blind eye on such illegal acts after learning of them. Acting under color of Federal law, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend have acquiesced in the unconstitutional behavior of Defendants #4 and #5 finding justified violation of Plaintiff's rights guaranteed to him by, *inter alia*, the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution, discrimination against Plaintiff as a member of a protected class of mentally ill persons seeking justice in

courts of the state of New Jersey, and deprivation of the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled.

VI. QUESTION OF DEFENDANTS' IMMUNITY

107. Defendants #4 and #5 directly interfered with the due course of justice in the state court lawsuit where Plaintiff was a *pro se* indigent mentally ill litigant causing legally cognizable detriment to Plaintiff while Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend acquiesced to, and tacitly authorized, approved, and/or encouraged, illegal conduct of Defendants #4 and #5 against Plaintiff and failed to prevent such illegal conduct; Defendants conspired against Plaintiff, performed acts in furtherance of such conspiracy with a purpose to cause legally cognizable detriment to Plaintiff, and did cause such legally cognizable detriment to Plaintiff; although acting under color of Federal law, such Defendants' functions were performed clearly and unequivocally outside of the scope of Defendants' authority and were never authorized by the Congress, Constitution, or laws of the United States.

108. It is well settled that immunity attaches to function, not to the manner in which it is performed. (emphasis added). Defendants, figuratively speaking, put on the mantles of the State Court Judges and were functioning as some ugly arm of the State Court. Defendants, *inter alia*, denied Plaintiff his right to further prosecute his state court case and to bring it to trial in person in the United States appearing *pro se*; it was, however, a function of a court judge that could be proper only if Plaintiff were judicially found to be mentally incompetent. De-

fendants performed functions beyond the scope of their authority and clearly in excess of their jurisdiction and official responsibilities; Defendants never had jurisdiction to interfere with ongoing formal judicial proceedings where Plaintiff was a *pro se* indigent litigant. Defendants, therefore, failed to keep within the limits of their authority.

109. Immunity does not protect Defendants because their actions taken against Plaintiff in connection with his participation in the state court lawsuit were not part of their functions. None of Defendants was a party to or appeared in any capacity in the state court lawsuit, where Plaintiff was seeking justice a *pro se* litigant, to allow them any voice there.

110. Defendants' conduct violated Plaintiff's constitutional rights protected, *inter alia*, by the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution of which a reasonable person would have known and which had been clearly and repeatedly established by Plaintiff orally and in writing with citation of applicable law just in case Defendants had never heard before about existence of such rights or law. "Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines." *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992). Under the facts of the instant matter, Defendants have knowingly and willfully transgressed several times one of the brightest lines out there with such light intensity that can make a blind person's eyes capable of seeing again.

111. Defendants in this case have knowingly stripped themselves of their official character and subjected themselves to the consequences of their individual conduct. Defendants have forfeited their immunity because

of their failure to comply with, *inter alia*, elementary principles of procedural due process. Defendants acted in clear absence of any jurisdiction over the state court lawsuit. Neither Constitution nor Congress or Federal laws of the United States contained any authority for Defendants' interference with ongoing state court proceedings and, therefore, support for Defendants' actions can be found nowhere. Judicial systems would be upset if Defendants were allowed to interfere with ongoing court proceedings defiantly telling Honorable Court Judges and litigants who may or may not proceed with litigation and prescribing some illegal and knowingly impossible to be complied with prerequisites for that matter, like compelling indigent *pro se* litigants to retain a professional counsel, etc.

112. Acting under color of Federal authority, Defendants willfully and knowingly stepped on the slippery slope of (a) denying to Plaintiff, a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey, the equal protection of the laws and the equal privileges under the laws to which Plaintiff was entitled, and (b) violating cognizable constitutional rights of Plaintiff, all of which resulted in a multiplying effect adding to economic damages previously suffered by Plaintiff and to aggravation of his pre-existing condition. It could only be in Defendants' fevered imagination if they thought of themselves as "Gods" or "Monarchs of the XXI century" or some "Ultimate Judges" allegedly possessing impunity or absolute immunity shielding them from any liability for whatever wrongs they may commit.

113. Under the factual circumstances presented *supra*, each and all Defendants stand before the law in the in-

stant case merely as private individuals. Immunity does not apply here.

VII. CAUSES OF ACTION

A. FIRST CAUSE OF ACTION

Violation of Plaintiff's clearly established constitutional rights by Defendants acting under color of Federal authority

Bivens cause of action

114. Plaintiff has a valid *Bivens* cause of action. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 US 388 (1971).

115. Plaintiff has voluntarily accepted significant societal obligations in, and developed significant and substantial voluntary connections and sufficient contacts with the United States and with the United States legal system which, according to abundant US case law, entitles him to, and invests him with rights guaranteed by, *inter alia*, the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution as well as by the equal protection clause of the Fourteenth Amendment. Under the above stated facts, Plaintiff left the United States on November 24, 2007 for a short-term trip to Russia relying, *inter alia*, on proper assurances of the agent of the DHS, *see supra*, that Plaintiff would not have problems getting a new B1/B2 visa and returning to the United States in connection with his state court lawsuit; in this connection, Plaintiff submits to this Court that the shield which the Bill of Rights, the equal protection of the laws, and other parts of the Constitution of the United States provided to protect Plaintiff's rights while

he remained in the United States in connection with the formal judicial proceedings there should not be stripped away because he was forced by Defendants, who illegally conspired against him for that matter, to remain in another country against his will and to his detriment. (emphasis added).

116. There are no available alternative forms of relief to Plaintiff for violation of his constitutional rights. The US Congress has not provided adequate remedies for rectification of cognizable constitutional wrongs in this particular setting where Plaintiff, an extraterritorial nonresident alien with present whereabouts outside of the United States, was a *pro se* litigant in formal state court proceedings in the United States. (emphasis added). Plaintiff's injury may now be redressed by a damages remedy only. If *Bivens* action were inapplicable to Defendants, the costs of their constitutional violations would be borne solely by Plaintiff who would not have any redress for that matter and which, in its turn, would clearly violate the principle that for every wrong, there should be a remedy. Under the facts and circumstances of the instant matter, remedy for Defendants' violations of Plaintiff's constitutional rights is damages or nothing.

117. Plaintiff has properly alleged and provided specific facts that he has been deprived of his constitutional rights by Defendants acting under color of Federal authority and that such rights were clearly established by him at the time of each such violation.

118. Because the doctrine of respondeat superior does not apply in *Bivens* actions, Plaintiff has properly alleged and provided specific facts that each Defendant was personally involved in violation of his constitutional rights.

119. Plaintiff's *Bivens* claim is also based on Defendants' conspiracy against him; Plaintiff has properly alleged, and provided specific facts for that matter, the existence of an express and/or implied agreement among Defendants to violate Plaintiff's constitutional rights and that such conspiratorial agreement furthered by Defendants eventually resulted in actual violation of his constitutional rights.

120. Under the facts of the instant matter, Plaintiff submits that recognizing *Bivens* cause of action in the instant case would not require judicial review of the Executive Branch's conduct of Foreign Affairs and would not imply an extraterritorial reach of such cause of action. "The liability of federal agents for violation of constitutional rights should not depend upon where the violation occurred." *Carlson v. Green*, 446 US 14, at 24 (1980). Despite the fact that Plaintiff presently remains in Russia where he was forced to remain against his will and to his detriment by Defendants, all constitutional violations were ultimately committed by Defendants in the United States because the source of Plaintiff's rights for that matter has always been there together with the state court litigation itself where Plaintiff was simply seeking justice as a *pro se* indigent litigant; should this Court enter its judgment against Defendants and their US-based personal assets, as Plaintiff lawfully demands in this complaint, enforcement of such judgment will also be in the United States.

121. *Bivens* liability attaches in the instant matter to top-level officials as well who are in no way scapegoats; such officials were the true and ultimate decision-makers in the conspiracy against Plaintiff. *Bivens* cause of action and remedy is also available to Plaintiff in this particular

case because it involves no special factors counseling hesitation in the absence of affirmative action by Congress. As indicated *supra*, Defendants conspired among themselves, *inter alia*, to not respond to at least four legal warnings properly served on them by Plaintiff; Defendants have not responded to such legal warnings within a reasonable period of time or ever; therefore, pursuant to the doctrine of estoppel by acquiescence, Defendants have acquiesced at least four times to the instant lawsuit against them and to all damages to which Plaintiff may be entitled, including but not limited to damages recoverable under *Bivens*; Defendants have further acquiesced to the fact that judicially created remedies against them might be appropriate even if requiring them to defend against Plaintiff's lawsuit might inhibit their efforts to perform their official duties and that they might have the resources to answer whatever verdict that may be entered against them for that matter; the fact is, Defendants have never advised Plaintiff or the court otherwise and prior to the date of the instant complaint.

B. SECOND CAUSE OF ACTION
Violation of the second clause of 42 USC 1985(2), as provided for by 42 USC 1985(3)

122. Defendants have conspired for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the state court lawsuit, where Plaintiff was seeking justice as a *pro se* indigent litigant, with intent to deny to Plaintiff, a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey, the equal protection of the laws and the equal privileges under the laws; Defendants per-

formed acts in furtherance of their conspiracy whereby Defendants eventually injured Plaintiff, both in his person by aggravating his pre-existing condition and in his property, because Plaintiff was lawfully enforcing, and/or attempting to enforce, his rights to the equal protection of the laws and the equal privileges under the laws, and eventually deprived Plaintiff of such his rights to which he, under the facts of this complaint, was entitled just like any citizen of the United States.

123. Plaintiff has properly alleged and provided specific facts that Defendants conspired against him; Defendants worked together by agreement to commit illegal acts using illegal methods to Plaintiff's detriment; Defendants each time agreed among themselves to take actions against Plaintiff before taking such actions. Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend, by their own conduct, willfully associated themselves with, and became members of the conspiracy against Plaintiff. Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend never withdrew from the conspiracy by taking affirmative steps to terminate or abandon their participation in it.

124. Plaintiff has properly alleged and provided specific facts that Defendants took their actions against him out of discriminatory animus towards him as a member of a protected class of mentally ill persons seeking justice in courts of the state of New Jersey. Plaintiff properly advised Defendants, *see supra*, that he had certain mental illness, that his mental disorder was not dangerous, and that he was a person of sound mind and judgment who had never posed threat to his own property, safety, or welfare or that of others. Plaintiff has never been judicially declared incompetent; he has never lacked stand-

ing to appear *pro se* in formal judicial proceedings or capacity to sue and be sued. Plaintiff further advised Defendants that he was appearing *pro se* in the court of the state of New Jersey pursuant to NJSA 2A:15-1. Knowing the fact that Plaintiff was of full age, Defendants repeatedly advised him that he may not further prosecute his state court lawsuit and bring it to trial in person in the United States appearing *pro se*. Therefore, for purposes of the clearly established law, Defendants treated Plaintiff as a person of unsound mind, see NJSA 2A:15-1, while there was no evidence at all to show or to establish that Plaintiff had ever been or actually was a person of unsound mind. (emphasis added). Under the facts and circumstances and in the context of the instant matter, "unsound mind", although not defined in New Jersey Permanent Statutes, is unequivocally equated with a mental illness. Therefore, Defendants constructively asserted and actually acted on the basis of their own presumption that Plaintiff was a mentally ill person and a person of unsound mind for that matter, yet they totally failed to prove the affirmation of such position by explicit evidence or any proof whatsoever; Defendants conspired to discriminate against Plaintiff and such Defendants' conspiratorial actions were clearly motivated by invidiously discriminatory animus towards mentally ill Plaintiff, *see supra*. It is undisputed that a class of mentally ill persons seeking justice in courts of the state of New Jersey is a protected class for purposes of the second clause of 42 USC 1985(2). It is further undisputed that Plaintiff was, and Defendants knew it, an indigent litigant appearing *pro se* in the formal judicial proceedings in the United States. Plaintiff properly advised Defendants that he had certain mental illness and Defendants acted on the

basis of such Plaintiff's information and on the basis of their own presumption that Plaintiff was a mentally ill person. Under the facts and circumstances and in the context of the instant matter, Plaintiff was entitled to the equal protection of the laws and the equal privileges under the laws being a litigant in the formal judicial proceedings in the US; Plaintiff could enjoy such privileges only appearing *pro se*. (emphasis added). By repeatedly and willfully denying him the right to, and advising him for that matter that he may not, further prosecute his state court lawsuit and bring it to trial in person in the United States appearing *pro se*, Defendants deprived Plaintiff of the equal protection of the laws and the equal privileges under the laws because he was a mentally ill person seeking justice in court.

125. Under the facts of the instant matter, there is also further evidence that Defendants discriminated against Plaintiff and deprived him of the equal protection of the laws and the equal privileges under the laws because he was a mentally ill person seeking justice in court. In this connection only, Plaintiff respectfully refers this Court to paragraph 28, pages 14-15, *see supra*; Aleksandr Malyutin's girlfriend was his witness in connection with, *inter alia*, events described *supra* at paragraph 37, pages 18-19; on November 27, 2007, both Aleksandr Malyutin, as described *supra*, and his girlfriend requested access to court, as a *pro se* litigant and as a willing witness, respectively, and filed their corresponding applications with Defendants for that matter; in this connection, the only genuine material difference between Aleksandr Malyutin and his girlfriend was that he was a mentally ill person and she was not; (emphasis added); the fact is, from Defendants' point of view, both Aleksandr Malyutin

and his girlfriend lacked strong ties to Russia; (emphasis added); Aleksandr Malyutin's girlfriend could in no way establish strong ties to Russia to be eligible for a B1/B2 visa; first, it had been just one month since her return from the US that she had visited for the first time in her life and on her summer work and travel program visa that she had overstayed by at least two months; second, the US was the first foreign country that she had visited; third, she was a 23-year old single, pregnant, unemployed student of her last year in Russian college and her graduation examinations were fast approaching; fourth, she had no source of income and no assets in Russia; fifth, she had no supporting documents whatsoever during her December 11, 2008 appointment at the Embassy except for her personal written certification that she was a willing witness in connection with formal judicial proceedings in the US; despite the fact that she unequivocally lacked strong ties to her home country and was a presumed immigrant to the United States, all pursuant to, *inter alia*, INA 214(b), codified at 8 USC 1184(b), an unknown named white female US Consular officer who personally talked to Aleksandr Malyutin's girlfriend at the Embassy on December 11, 2008 never denied access to court to her and issued a B1/B2 entry visa to the United States to her because she was a willing witness in connection with formal judicial proceedings in the United States which outweighed an unequivocal presumption of her being an immigrant; Aleksandr Malyutin's girlfriend was otherwise ineligible for a B1/B2 entry visa and if not for her status of a willing witness in formal judicial proceedings in the United States she would never be able to obtain a B1/B2 entry visa under the then present circumstances. Just like his girlfriend, Aleksandr Malyutin too,

from Defendants' point of view however, lacked strong ties to Russia, but his status was even of greater importance because he was a *pro se* litigant in ongoing formal judicial proceedings in the United States whose rights for that matter were protected by the US Constitution, Federal and State laws, International Treaties of the US, and by a quite full panoply of procedural safeguards constitutionally required for due process. Unlike his girlfriend, Aleksandr Malyutin was a mentally ill person, and Defendants repeatedly and willfully denied access to court to him and deprived him of the equal protection of the laws and the equal privileges under the laws because of his mental illness and his membership in a protected class of mentally ill persons seeking justice in courts of the state of New Jersey, all as described *supra*. "[O]f course, persons with mental disabilities have been subject to historic mistreatment, indifference, and hostility." *Olmstead v. L.C.*, 527 US 581, 608 (1999) (Justice Kennedy, concurring in the judgment).

126. Plaintiff has properly alleged and provided specific facts that Defendants performed, at least, eight acts in furtherance of their conspiracy against him whereby Defendants eventually injured Plaintiff, in his person by aggravating his pre-existing condition and in his property, because Plaintiff was lawfully enforcing, and/or attempting to enforce, his rights to the equal protection of the laws and the equal privileges under the laws, and deprived Plaintiff of such his rights.

C. THIRD CAUSE OF ACTION
Violation of 42 USC 1986

127. Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend had personal knowledge that the wrongs conspired to be done against Plaintiff as mentioned *supra* were about to be committed, and had power to prevent and/or aid in preventing the commission of such wrongs, yet they neglected and/or refused so to do; in light of the facts mentioned *supra*, such wrongful acts were actually committed against Plaintiff and, therefore, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend are liable to Plaintiff, who got injured, for all damages caused to him by such wrongful acts; Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend by reasonable diligence could have prevented such Plaintiff's damages and they had plenty of time to take such steps, yet they willfully refused to do so and, therefore, Defendant Rice, Defendant Burns, Defendant Russell, and Defendant Amend are guilty of such wrongful neglect and/or refusal.

VIII. PLAINTIFF'S CLAIMS AGAINST DEFENDANTS

A. COUNT I
Violation of Constitutional Rights
Bivens Claim

128. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 127, inclusively, as if set forth in full herein.

129. Defendants had a duty to not conspire to violate and to not violate Plaintiff's constitutional rights.

130. Defendants, in their various activities, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of Federal authority and being personally involved in such conspiracy, to violate Plaintiff's various constitutional rights which were special, deserved special status, and were guaranteed to him by the Constitution of the United States, and by actually violating, a number of times and by means of their conspiracy among themselves, Plaintiff's fundamental rights, including but not limited to the right of access to court and the right to a fair and objective trial, as secured by the due process clauses of the Fifth and Fourteenth Amendments to the US Constitution, and the right to equal protection, as secured by the equal protection clause of the Fourteenth Amendment to the US Constitution.

131. As a direct result of the above, Defendants have caused injury to Plaintiff, including by depriving him of, and defeating his various rights that were guaranteed to him by the US Constitution in connection with:

(a) His participation in the state court lawsuit where Plaintiff was seeking justice as a *pro se* indigent litigant; and

(b) His attempt to appeal dismissal of his state court lawsuit as previously described.

132. Due to the facts that have been pled and in avoidance of Defendants' immunity, neither defense of sovereign immunity nor defense of absolute or qualified official immunity applies in the instant matter; there is no immunity available to Defendants.

B. COUNT II
Obstruction of Court Order

133. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 132, inclusively, as if set forth in full herein.

134. Defendants had a duty to not conspire to obstruct court orders and to not obstruct court orders.

135. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of Federal authority and being personally involved in such conspiracy, to prevent Plaintiff from performing his duties under the January 18, 2008 order knowing, *inter alia*, that it would cause Plaintiff to lose his otherwise meritorious state court lawsuit where he was seeking damages in excess of three hundred thousand US dollars, and by actually preventing Plaintiff, at least two times and by means of their conspiracy among themselves, from performing his duties under the January 18, 2008 order.

136. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the following manners:

(a) By causing Plaintiff to oppose the state court defendants' motions to dismiss and to make his otherwise needless motions with the state court;

(b) By causing Plaintiff to lose his otherwise meritorious state court lawsuit;

(c) By altering the outcome of the state court lawsuit;

(d) By causing Plaintiff to conduct extensive research in order to properly prepare and file his voluminous ap-

peal with Appellate Division in an attempt to appeal the dismissal of his state court lawsuit;

(e) By causing Plaintiff to incur otherwise needless expenses;

(f) By causing Plaintiff serious emotional and mental injury;

(g) By causing Plaintiff to be exposed to a severe and long-lasting emotional stress;

(h) By causing Plaintiff to suffer and to continue suffering great mental pain and suffering, anxiety, rage, extreme terror, tremendous fright, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain, loss of enjoyment of life;

(i) By causing aggravation of Plaintiff's pre-existing condition such that Plaintiff will have to incur expenses, possibly for the rest of his life, in connection with psychological treatment, therapy, counseling, and medication; and

(j) By causing Plaintiff to be prevented from obtaining the full enjoyment of life.

C. COUNT III
Destruction of Evidence

137. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 136, inclusively, as if set forth in full herein.

138. Defendants had a duty to not conspire to endeavor to destroy evidence in connection with formal judicial proceedings and to not endeavor to destroy evidence in connection with formal judicial proceedings.

139. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming

to a meeting of the minds and conspiring among themselves, while acting under color of Federal authority and being personally involved in such conspiracy, to prevent Plaintiff from performing his duty to preserve his material evidence knowing that Plaintiff's material evidence in connection with the state court lawsuit would be lost, damaged, or destroyed unless Plaintiff personally returned to the US, and by actually causing such Plaintiff's material evidence to be lost, damaged, or destroyed.

140. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the following manners:

(a) By causing Plaintiff's meritorious state court lawsuit where he enjoyed a significant possibility of success on the merits to be significantly impaired;

(b) By making it impossible for Plaintiff to further prosecute his state court lawsuit;

(c) By precluding Plaintiff from winning his lawsuit against the state court defendants during a fair and objective trial;

(d) By causing Plaintiff serious emotional and mental injury;

(e) By causing Plaintiff to be exposed to a severe and long-lasting emotional stress;

(f) By causing Plaintiff to suffer and to continue suffering great mental pain and suffering, anxiety, rage, tremendous fright, apprehension, severe mental and emotional distress, nervous shock, worry, mental anguish, emotional pain; and

(g) By causing aggravation of Plaintiff's pre-existing condition such that Plaintiff will have to incur expenses, possibly for the rest of his life, in connection with psychological treatment, therapy, counseling, and medication.

D. COUNT IV
Violation of State Law

141. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 140, inclusively, as if set forth in full herein.

142. Defendants had a duty to not conspire to violate Plaintiff's rights guaranteed to him by the law of the state of New Jersey and to not violate Plaintiff's rights guaranteed to him by the law of the state of New Jersey.

143. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of Federal authority and being personally involved in such conspiracy, to violate Plaintiff's various rights guaranteed to him by New Jersey state law, and by actually violating, a number of times and by means of their conspiracy among themselves, Plaintiff's rights as secured by, *inter alia*, NJSA 2A:15-1 and NJSA 30:4-24.1.

144. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the manners previously enumerated in Count I through Count III, inclusively, which are hereby incorporated by reference.

E. COUNT V
Violation of the second clause of 42 U.S.C. Sec. 1985(2)

145. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 144, inclusively, as if set forth in full herein.

146. Defendants had a duty to not conspire to violate the second clause of 42 USC 1985(2) and to not violate the second clause of 42 USC 1985(2).

147. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of Federal authority and being personally involved in such conspiracy, to violate the second clause of 42 USC 1985(2) to Plaintiff's detriment, and by actually violating, a number of times and by means of their conspiracy among themselves, the second clause of 42 USC 1985(2) and performing acts in furtherance of the object of their conspiracy whereby Plaintiff has been injured in his person and in his property and deprived of his rights and privileges, all as previously described.

148. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the following manners:

(a) Previously enumerated in Count I through Count IV, inclusively, which are hereby incorporated by reference; and

(b) By causing Plaintiff's property to be lost, damaged, or destroyed.

F. COUNT VI
Violation of 42 U.S.C. Sec. 1986

149. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 148, inclusively, as if set forth in full herein.

150. Defendants had a duty to not violate 42 USC 1986.

151. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by violating, a number of times and while acting under color of Federal authority, 42 USC 1986 to Plaintiff's detriment and by neglecting and/or refusing to prevent or aid in preventing the commission of wrongful acts against Plaintiff, as previously described.

152. As a direct result of the above, Defendants caused injury to Plaintiff, and therefore, Plaintiff seeks all damages caused by Defendants' wrongful acts against him as previously described in this complaint. (emphasis added).

G. COUNT VII

Violation of International Treaties of the United States

153. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 152, inclusively, as if set forth in full herein.

154. Defendants had a duty to not conspire to violate Plaintiff's rights guaranteed to him by International Treaties of the United States and to not violate Plaintiff's rights guaranteed to him by International Treaties of the United States.

155. Defendants, as indicated in the facts of the instant complaint, have repeatedly breached this duty by coming to a meeting of the minds and conspiring among themselves, while acting under color of Federal authority and being personally involved in such conspiracy, to violate Plaintiff's various rights guaranteed to him by various International Treaties of the United States, including those binding on the United States, and by actually violating, a number of times and by means of their conspiracy among themselves, such Plaintiff's rights, including

but not limited to the right to equality before law as guaranteed by Article II and right to recognition of juridical personality and civil rights as guaranteed by Article XVII and right to a fair trial as guaranteed by Article XVIII of the American Declaration of the Rights and Duties of Man as made binding on the United States by the Charter of the Organization of American States.

156. As a direct result of the above, Defendants caused injury to Plaintiff, including but not limited to the manners previously enumerated in Count I through Count VI, inclusively, which are hereby incorporated by reference.

IX. MONETARY RELIEF REQUESTED

WHEREFORE, Plaintiff prays that this Court enter judgment against Defendants, jointly and severally, and award the following monetary relief in favor of Plaintiff, payable from Defendants' US-based personal assets:

(a) Compensatory damages in excess of one hundred million US dollars;

(b) Exemplary/punitive damages in excess of one hundred million US dollars;

(c) Attorney's fees in excess of five hundred thousand US dollars; and

(d) Such other and further monetary relief, for an amount deemed reasonable by the trier of fact, to which Plaintiff may be entitled.

X. DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all of the triable issues of the instant complaint, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,
_____/s/_____
ALEKSANDR MALYUTIN
Davydkovskaya St., 12/2-49
Moscow, Russia 121352
E-mail: h2a_program@yahoo.com
Telephone/Facsimile Numbers:
+1 (718) 715-1390 voice/facsimile in the
US to reach Plaintiff in Moscow (VoIP
phone service provided by Vonage.com), or
+7 (915) 409-8012 voice in Moscow
(Moscow is usually 8 hours ahead of
Washington, DC)
Plaintiff *pro se*
Date: March 2, 2009

STATEMENT OF VERIFICATION UNSWORN CERTIFICATE UNDER PENALTY OF PERJURY PURSUANT TO 28 USC 1746

I certify under penalty of perjury under the laws of the United States of America that the foregoing complaint is true and correct. Executed on this second day of March, two thousand and nine.

_____/s/_____
(Signature)

APPENDIX G

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, PLAINTIFF
v.
CONDOLEEZZA RICE ET AL., DEFENDANTS.

[Filed: February 27, 2009]

MINUTE ORDER ON MOTION TO
AMEND/CORRECT

It is hereby ORDERED that the plaintiff's motion [5] to file a corrected civil cover sheet, which is attached to the motion, be, and hereby is, GRANTED.

Issued by Judge Emmet G. Sullivan on 2/27/09. (EHS)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, PLAINTIFF
v.
CONDOLEEZZA RICE ET AL., DEFENDANTS.

[Filed: February 25, 2009]

PLAINTIFF'S *EX PARTE* MOTION FOR LEAVE TO AMEND/CORRECT CIVIL COVER SHEET

Plaintiff *pro se*, Aleksandr Malyutin, who proceeds in the above-captioned matter *in forma pauperis* ("Plaintiff") hereby respectfully moves this Court for leave to amend/correct January 15, 2009 Civil Cover Sheet JS-44 that was completed by this Court for the use by the Clerk of this Court for the purpose of initiating the civil docket sheet in the above-captioned matter. The grounds for this motion are set forth more fully in the attached memorandum in support hereof. A proposed Order consistent with this motion is attached hereto.

Respectfully submitted,

/s/
ALEKSANDR MALYUTIN
Plaintiff *pro se*
Davydkovskaya St., 12/2-49
Moscow, Russia 121352
+7 (915) 409-8012, or
+1 (718) 715-1390

Dated: February 24, 2009

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:09-cv-00093-EGS

ALEKSANDR MALYUTIN, PLAINTIFF
v.
CONDOLEEZZA RICE ET AL., DEFENDANTS.

[Filed: February 25, 2009]

MEMORANDUM IN SUPPORT OF PLAINTIFF'S *EX PARTE* MOTION FOR LEAVE TO AMEND/CORRECT CIVIL COVER SHEET

FACTUAL BACKGROUND

On January 08, 2009, Judge Colleen Kollar-Kotelly granted Plaintiff's Motion for Leave to proceed in forma pauperis, PACER Doc. No. 2; as a result of the Judge's ruling, Plaintiff's Complaint, Part 1 of PACER Doc. No. 1, was filed with this Court on January 15, 2009. In light of the fact that this Court had authorized Plaintiff to proceed in the above-captioned matter pro se and in forma pauperis, this Court completed the January 15, 2009 Civil Cover Sheet JS-44, Part 2 of PACER Doc. No. 1, (the "CCS") for Plaintiff; the CCS was then used by the Clerk

of this Court for the purpose of initiating the civil docket sheet in the above-captioned matter.

On February 17, 2009, Plaintiff, who had never before had access to PACER, registered with PACER and downloaded, for his own records, electronic copies of, inter alia, Part 1 and Part 2 of PACER Doc. No. 1; it was when Plaintiff noticed for the first time that certain critical errors were committed by this Court during the embryo stage of the instant case, including but not limited to the use of inaccurate and incomplete information to complete the CCS. Plaintiff then immediately notified this Court via telephone about certain critical errors; the Court advised Plaintiff via telephone that, *inter alia*, a request to amend/correct the CCS should be by motion.

ARGUMENT

I. Because of the need for accurate and complete information, the Court should ensure the accuracy of the information used to complete the CCS.

Pursuant to Instructions for completing Civil Cover Sheet JS-44, this form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Because of the need for accurate and complete information, the accuracy of the information should be ensured when completing Civil Cover Sheet JS-44.

II. "US Government defendant" is inaccurate and inapposite Basis of Jurisdiction in the above-captioned matter.

When completing Section II of the CCS, the Court erroneously selected "U.S. Government Defendant" as the Basis of Jurisdiction in the above-captioned matter; this choice of the Basis of Jurisdiction is inaccurate and inapposite and may result in, *inter alia*, erroneous service of summonses by this Court upon Defendants under Rule 4(i)(2) of the Federal Rules of Civil Procedure.

Choosing "U.S. Government Defendant" would be appropriate only if Plaintiff were suing the United States, its agencies, or United States officers in their official capacities; this is simply not the case in the instant matter.

There is no need to guess whether Plaintiff sues Defendants in their "individual capacities", "official capacities", or both capacities. Plaintiff expressly and unambiguously says in various parts of his Complaint, Part 1 of PACER Doc. No. 1, that he sues each and all Defendants only in their individual capacities. Part 1 of PACER Doc. No. 1. Therefore, the United States is not, and has never been, a party to the instant lawsuit; there are no "Federal Defendants" in the instant matter.

Pursuant to Rule 8(a)(1) of the Federal Rules of Civil Procedure, Plaintiff's Complaint contains a short and plain statement of the grounds for this Court's jurisdiction; there are four bases of jurisdiction:

a) 28 USC 1332(a)(2) – Diversity jurisdiction;
b) 28 USC 1331 – Federal question jurisdiction;
c) 28 USC 1343(a)(1)(2) – Civil rights jurisdiction; and
d) 28 USC 1367 – Supplemental jurisdiction.

In light of the fact that the United States is not a party to the instant lawsuit and federal question actions take precedence over diversity cases, the Basis of Jurisdiction in the above-captioned matter is "Federal Question (U.S. Government Not a Party)".

III. "42 USC 1983" is inapposite US Civil Statute in the above-captioned matter; Plaintiff's Complaint was filed under, *inter alia*, second clause of 42 USC 1985(2) and under 42 USC 1986.

When completing Section VI of the CCS, the Court erroneously cited "42 USC 1983" as the US Civil Statute under which Plaintiff's Complaint was filed in the above-captioned matter; this choice of the US Civil Statute is inaccurate and inapposite; Plaintiff never filed, or intended to file, his Complaint under 42 USC 1983.

42 USC 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the pur-

poses of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

It is clear that one of the elements of a Section 1983 claim is a requirement that Defendants must have acted under color of state law; this is simply not the case in the instant matter. Plaintiff expressly and unambiguously says in various parts of his Complaint, Part 1 of PACER Doc. No. 1, that each and all Defendants acted under color of federal law only; Plaintiff does not have, and never had, standing to prevail in a claim under section 1983.

Plaintiff's Complaint was filed under, *inter alia*, the following US Civil Statutes: second clause of 42 USC 1985(2) and 42 USC 1986. Part 1 of PACER Doc. No. 1.

IV. The Court failed to provide a brief statement of cause when completing Section VI of the CCS.

Pursuant to Instructions for completing Civil Cover Sheet JS-44, a brief statement of cause should be provided when completing Section VI of Civil Cover Sheet which this Court failed to do; therefore, information provided by this Court in Section VI of the CCS is also incomplete.

It is clear from the face of Plaintiff's Complaint, Part 1 of PACER Doc. No. 1, that the primary cause of action in the above-captioned matter is as follows: Obstructing justice, neglect to prevent.

CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Motion for Leave to amend/correct Civil Cover Sheet be granted so that the attached hereto as Exhibit A an amended/corrected version of Civil Cover Sheet JS-44, that contains accurate and complete information, be used by the Clerk of this Court in the above-captioned matter in lieu of the January 15, 2009 Civil Cover Sheet JS-44, Part 2 of PACER Doc. No. 1.

Respectfully submitted,

_____/s/_____
ALEKSANDR MALYUTIN
Plaintiff *Pro Se*
Davydkovskaya St., 12/2-49
Moscow, Russia 121352
+7 (915) 409-8012, or
+1 (718) 715-1390

Dated: February 24, 2009